Supreme Court U.S.
FILED
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No. 02-311

IN THE

Supreme Court of the United States

KEVIN WIGGINS,

Petitioner,

v.

SEWALL SMITH, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX
VOLUME I of II

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PETITION FOR CERTIORARI FILED AUGUST 27, 2002
CERTIORARI GRANTED NOVEMBER 18, 2002

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In the Circuit Court for Baltimore County

Case No. 88-CR-5464

State of Maryland v. Kevin Wiggins

Filing Date: Oct. 20, 1988 Case Type: Indictment

Dec. 8, 1988	State's Notice of Intention to Seek Sentence of Death.
Aug. 1, 1989	Jury trial waived, testimony taken, trial not concluded.
Aug. 4, 1989	Trial resumed, testimony taken. At end of entire case defendant's motion for judgment of acquittal - overruled. Pre-sentence investigation ordered by the court.
Aug. 7, 1989	Count 1 Murder Plea: Not Guilty Finding: Guilty Count 2 Robbery - General Plea: Not Guilty Finding: Guilty Count 3 Burglary - Int/Steal/Night Plea: Not Guilty Finding: Judg Acqt Count 4 Theft Plea: Not Guilty Finding: Guilty Count 5 Theft Plea: Not Guilty Finding: Guilty

Count 6 Theft
Plea: Not Guilty Finding: Merged

Oct. 12, 1989	Jury selected and sworn.
Oct. 18, 1989	Trial resumed. At this point in the proceedings, defendant's request for stay of execution - granted as to count #1.
Jan. 19, 1993	Defendant's Petition for Post Conviction Relief.
Jan. 7, 1994	Hearing had in re: Post Conviction. Hearing continued to a later date. Writ to be issued for defendant on 1/18/94.
March 28, 1994	Hearing had in re: Post Conviction. Hearing continued from 3/18/94. Hearing not concluded, to resume 3/29/94.
March 29, 1994	Hearing resumed. Testimony taken. Hearing not concluded, to resume 4/6/94 for arguments.
April 6, 1994	Hearing had in re: Post Conviction. Hearing resumed. Testimony taken. Arguments by counsel presented. Hearing not concluded. Hearing continued to 4/7/94 at 9:30 A.M.

April 7, 1994[1]	Post Conviction Hearing is resumed. Arguments continued and concluded.
May 25, 1994	Hearing had in re: Post Conviction - memorandum opinion to be filed.
Oct. 22, 1997	Judgment and Opinion Order of the Court Denying Post conviction relief.

[1]Court docket sheet incorrectly identifies this date as April 8, 1994.

JA 4

Court of Appeals for the State of Maryland

No. 139 Sept. Term 1989

Kevin Wiggins v. State of Maryland

Nov. 8, 1991	Judgment affirmed, except as to theft Counts 4 and 5 of the indictment, as to which the judgments are vacated. Opinion by Murphy, C.J. Dissenting opinion by Eldridge, J., in which Cole, J. concurs.

JA 5

Court of Appeals for the State of Maryland

No. 121 Sept. Term 1997

Kevin Wiggins v. State of Maryland

Feb. 10, 1999	Order denying petition for post conviction relief affirmed, with costs. Opinion by Wilner, J. Dissenting opinion by Eldridge, J., in which Bell, C.J., joins.

United States District Court for the
District of Maryland

No. 99-CV-2420

Kevin Wiggins v. Thomas R. Corcoran

Aug. 8, 1999	PETITION for writ of habeas corpus; FILING FEE $5.00 Receipt # B160035 (ck) [Entry date 08/10/99]
Sept. 18, 2001	ORDER granting [1-1] petition as to claims of insufficiency of evidence and ineffective assistance of counsel with regard to the failure to present mitigating evidence during sentencing; DENYING Petitioner's claims; VACATING the conviction and sentence of Kevin Wiggins; DIRECTING that the Petitioner shall be RELEASED within 30 days unless within that time respondents advise the Court that they intend to appeal this decision; DIRECTING that the case be CLOSED (signed by Chf Judge J.F. Motz 9/18/01) (eg) (c/i & microfilmed 9/18/01) [Edit date 09/18/01]

United States Court of Appeals
for the Fourth Circuit

No. 01-23

Kevin Wiggins v. Thomas R. Corcoran

May 2, 2002	Published, authored opinion filed. [01-23] (beth)
May 2, 2002	Judgement order filed. Decision: REVERSED. EOD Date: 5/2/02. [01-23] (beth)
May 29, 2002	COURT ORDER filed [3593800] denying motion for rehearing [3588477-1] EOD Date: 5/29/02, denying motion for rehearing en banc [3588477-2] EOD Date: 5/29/02. Copies to all counsel. [01-23] (beth)

In the Circuit Court for Baltimore County, Maryland

State of Maryland
v. Case No. 88-CR-5464
Kevin Wiggins,
Defendant

Reporter's Official Transcript of Proceedings
July 25, 1989
Towson, Maryland

Before:
Honorable J. William Hinkel, Associate Judge

* * * *

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* * * *

MS. NETHERCOTT: One final motion concerning a defense motion to compel the State to come forward with evidence regarding the aggravator that they intend to rely on in this case. The thing is -- Your Honor has probably learned from the prior motion there's obviously an issue here regarding the sequence of events.
The discovery that has been provided to defense counsel in this case indicates the evidence shows Mr. Wiggins was in possession of belongings of Ms. Lacs on the 15th. There's a witness who has been deposed who indicates that she was alive the morning of the 16th.
THE COURT: Who is that witness by the way?
MS. NETHERCOTT: The witness is Edith Vassar, Your Honor. In light of that, the argument is that the State should be required to come forward and proffer at this point what their evidence is as to the existence of this aggravating factor for the simple reason to place the

defense in the position that we are now placed in, which is solely by virtue of the fact that the State has filed a notice of the intention to seek the penalty of death, the defense, if they elect to have a jury trial in this

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matter, is forced to go through the procedure of impaneling a death qualified jury, and I would submit that is highly prejudicial for a number of reasons.
I would direct the court's attention, and I have a copy of it with me here, a Supreme Court case of *Lockhart v. McCrae* (phonetically). The case was decided, I believe, back in 1984, and the issue before the court at that time came about as a result of two consolidated cases, *Brisby v. Georgia*, which was a case raising the same issue as *Lockhart v. McCrae*, and they were consolidated for resolution of the question as to whether or not the defendant's right to a jury of a fair cross section of the community was compromised or violated by virtue of having to have a death qualified jury preside over the guilt/innocence phase.
Essentially, Your Honor, it was a request that in these type of cases that the defendant be given a bifurcated jury. One jury to decide the issue of guilt or innocence. One jury to decide the issue of sentencing.
This case I believe came about starting back with Witherspoon which, of course, as I'm sure the court is aware, stands for the proposition that the defense is entitled to have on a jury a prospective juror who may have scruples against the death penalty. The logic of that opinion, Your Honor, as it was reflected in the

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Supreme Court's opinion on the matter was essentially that the State was not -- that it was not fair to the defendant for the State to be able to utilize a jury that was more prone to convict.
There have been for a long time many, many studies dealing with this entire question of death qualified juries being more conviction prone. Witherspoon reserved on the issue as to whether or not there was -- Witherspoon indicated there was not sufficient evidence at this time to support the proposition that, in fact, these type of jurors are more conviction prone.
We get to *Lockhart v. McCrae* and there's an extensive record from the Appeals Court. Of course, the record was made in the District Court and the opinion is written by Judge Rehnquist, who although quite candidly, Your Honor, he seems to have some dispute with some of the methodology of the statistics, he does indicate in the opinion that for purposes of argument, he's accepting those studies as valid.
And if the court is inclined, I can read them to the court. There's a number of studies that were presented and litigated. I don't know if the court wishes me to cite them here, but I can give you the page citation.
THE COURT: That's up to you.

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MS. NETHERCOTT: The page citation of the Lawyer's Edition, 2d. Ed. 137 on page 157, footnote 3 compiles all of the various studies that were presented in support of this proposition. The court accepted that

proposition that, in fact, these juries may be more conviction prone.
The holding of the case was that did not violate the defendant's right to a jury comprised of a fair cross section of the community, and essentially, I believe the court arrived at that conclusion on the basis that there had not prior to that time been a recognition that someone's right to a jury included a jury of different viewpoints.
We recognized the right to a representative injury including racial minorities and gender issues but not as to opinions, and obviously, that had to be balanced against the State's legitimate interest in a jury that could follow the law.
I would submit, Your Honor, though that this case arises in a different posture. That in a case where the State prior to commencement of the guilt/innocence proceeding where the nature of the evidence is revealing an inability to prove the one aggravating factor which is the sole basis that the State is relying on to force this to a death penalty proceeding.

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I would argue that in that particular situation, it is highly prejudicial, and it impacts Mr. Wiggins' right to an impartial jury, very specifically, a jury that will arrive at a determination of guilt or innocence impartially is being violated by the position that the defense has been forced into here.
Additionally, whatever rights he has under Maryland State law regarding the jury composition and also the exercise of any peremptory challenges is prejudiced by this also because those jurors who may not been excluded

on the basis of their views and attitudes toward the death penalty, the defendant is in a position of having to quite likely utilize peremptory challenges to get rid of those jurors. I would submit under the particular facts and posture of this case, that it is highly prejudicial to allow this to proceed.
THE COURT: Ms. Brobst.
MS. BROBST: I don't have the cite but the Grandison case in Maryland has indicated that the so-called death qualified jury is not unconstitutional and that you can proceed with a jury that has been asked the so-called death qualifying questions.
Again, I guess, if the defense wants to file a bill of particulars with respect to the information upon which the State is going to rely to prove a robbery, they

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may, and we would be required to answer that, but I can state --
THE COURT: I don't think she's specifically asking that. I think she's asking if that's what you're going to use to prove the robbery? Is that what you are saying, Ms. Nethercott?
MS. NETHERCOTT: My question, Your Honor, is what? I assume, obviously, the robbery is the aggravator cited, but the question is the sequence because if the robbery occurred on Thursday and the woman died at some future time, it is unconnected to that robbery, and then it is not an aggravator.
THE COURT: But the State, as I understand, is going to prove that the robbery occurred at the time of the murder. Isn't that the State's theory, Ms. Brobst?
MS. BROBST: Yes, Your Honor.

THE COURT: Isn't that what you want them to state on the record?
MS. NETHERCOTT: Well, I'm asking them to state how they are going to prove that.
THE COURT: Well, that's a little different.
Ms. Brobst, your response?
MS. BROBST: Is the court going to require me?
THE COURT: No. I didn't ask you to do that.

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I asked you your response to their demand that you tell them how you are going to prove it.
MS. BROBST: Well, I'm going to --
THE COURT: I'm not asking you to tell them how you are going to prove it. I'm asking your response.
MS. BROBST: I'm respectly declining to say how we are going to prove it. I'll say that the defense has all of the police reports and all of the information that we have in the case, and we'll be introducing evidence in the case which will prove it. Information which you have.
THE COURT: Ms. Nethercott, on what authority do you rely that the State -- on what authority do you rely that would require the State to tell you how it is going to prove that the robbery and murder occurred at the same time?
MS. NETHERCOTT: Excuse me for a moment, Your Honor. Your Honor, I don't have a specific case I can cite that would apply on all four's to the situation --
THE COURT: On three of the four?
MS. NETHERCOTT: -- that I am confronted with. Your Honor, the argument I think is one of logic.

23 It is one of fundamental fairness. It's an argument that
24 the question has to some extent remained open in light of
25 *Lockhart v. McCrae's* explicit recognition that such a jury

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1 is not impartial on the question of guilt/innocence.
2 THE COURT: You now know -- I'm sorry. Go
3 ahead.
4 MS. NETHERCOTT: Under the particular
5 circumstances of this case, Your Honor, I think it is
6 fairly unique with regard to the situation it presents in
7 terms of the proof problem.
8 THE COURT: Well, you know that the State is
9 relying on the robbery. If the State proves that the
10 defendant murdered the victim in the course of a robbery,
11 then you are likely to go onto the next stage of this
12 proceeding.
13 If the State doesn't prove that, then you are
14 not likely to go onto the next proceeding because it would
15 seem that they would probably find him not guilty if they
16 would believe he was in the car on the 15th and that she
17 was alive on the 16th but found dead on the 17th and can't
18 connect him thereafter.
19 MS. NETHERCOTT: But the problem is, Your
20 Honor, that all of the studies that the court has
21 acknowledged in this case say that the likelihood is that
22 a jury is more likely to convict simply because they are
23 death qualified because they will sit through discussions
24 about the death penalty. They will know --
25 THE COURT: I'm not going to quarrel with you

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1 about those statistics. I have no basis for quarreling
2 with you, but I don't understand or I'm not persuaded that
3 the State must tell you how it will go about proving its
4 case.
5 MS. NETHERCOTT: Well, the reason is, Your
6 Honor, because if the court agrees --
7 THE COURT: You have all of the information
8 that they have right now.
9 MS. NETHERCOTT: I understand, Your Honor,
10 but if the court agrees that this does present an issue
11 that is potentially very prejudicial to Mr. Wiggins, the
12 only way it seems to resolve that question would be to
13 require the State to come forward and state what this
14 evidence is.
15 I mean, if we take it to the other extreme
16 that the evidence was even more tenuous that he was in
17 possession of her things three weeks before this occurred,
18 and there's just simply no way that would show a murder in
19 the course of a robbery. The State would be free simply
20 by filing the death notice to proceed with a death
21 qualified jury. We can't get to the point of resolving
22 that until we know.
23 THE COURT: Do you believe that you have all
24 the information that the State has concerning the case?
25 That they have given you everything? Let's assume that

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1 they have.
2 Now, you want the State to tell you how they
3 are going to use that and what order and from whom and all
4 of that. Lay that out here so you can make a decision on

whether it should be court trial or jury trial? That's what you are asking them to do.
MS. NETHERCOTT: Basically, I'm asking for some prima facia showing that there's sufficient evidence of this aggravator.
THE COURT: I should have a mini trial in order to prepare you for the jury?
MS. NETHERCOTT: A prima facie case could be through a proffer, Your Honor.
THE COURT: I'm not going to require the State to do that. The State, if it wishes, may, but I'm not going to require the State to do that. I think they have given you everything they know about the case, the names of the witnesses, the evidence that they have. That they are relying on the robbery as the death qualifier. To do more I think is not required by any cases that you have given to me or that to my recollection, which is sometimes faulty, the appellate courts have said is demanded of the State, so that request is denied. Anything else?

* * * *

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

DIVISION OF PAROLE AND PROBATION

PRE-TRIAL INVESTIGATION

NAME: WIGGINS, Kevin (NMN)

ALIAS: None

TELEPHONE NUMBER: 233-3959

ADDRESS: 1013 Walnut Ave. Baltimore, Md 21233

DATE OF BIRTH: 9/2/61
AGE: 27

PLACE OF BIRTH: Baltimore, Md

SEX: Male RACE: Black

HEIGHT: 5'9" WEIGHT: 185

DATE REFERRAL RECEIVED: 4/14/89

DATE COMPLETED: 7/25/89

INVESTIGATOR: C. Albert Henry

INVESTIGATOR'S PHONE NO: 887-6538

COURT: Baltimore County Circuit

INDICTMENT NUMBER: 88CR5464

OFFENSE: Murder - First Degree
Credit Card Violations
Theft

TRIAL JUDGE: A. Owen Hennegan

MARITAL STATUS: Single

TRIAL DATE:

OCCUPATION: Security

PLEA: Not Guilty

EDUCATION: 10th Grade

TRIAL : Unknown

SOCIAL SECURITY NUMBER: 215-90-0724

DETAINERS:

DRIVER'S LICENSE NUMBER: W252-465-022-684

SID NUMBER: 349573

BOND: Incarcerated

FBI NUMBER: 242759X3

CUSTODY: Baltimore County Detention Center

DEFENSE ATTORNEY: Michele Nethercott

CO-DEFENDANT'S & STATUS: None

STATE'S ATTORNEY: S. Ann Brobst

SENTENCING JUDGE: A. Owen Hennegan

DATE OF DISPOSITION:

DISPOSITION:

FILE NUMBER: WIK44455

THIS REPORT IS FOR OFFICIAL COURT AND DEPARTMENTAL USE ONLY. INFORMATION

CONTAINED HEREIN IS CONFIDENTIAL AND PROTECTED BY BOTH STATE AND FEDERAL LAWS AND REGULATIONS. THIS REPORT IS NOT AVAILABLE FOR PUBLIC INSPECTION OTHER THAN AS OUTLINED UNDER ARTICLE 41, SECTION 124(b) OF THE ANNOTATED CODE OF MARYLAND.

DESCRIPTION OF PRESENT OFFENSE

The Statement of Charges reveals that, on 9/17/88, the police responded to the apartment of Florence C. Lacs and found her "deceased under suspicious circumstances." They also determined that her car had been stolen and, that during the unlawful entry, her wallet and credit cards had been removed form the premises. An investigation revealed that the credit cards were subsequently used at JC Penney, Sears and the Hecht Company. On 9/21/88, the defendant was stopped by the police while driving the victim's vehicle and the charges flow therefrom.

He also was wearing two rings which had been purchased with the stolen credit cards on 9/16/88.

STATEMENT OF DEFENDANT

Inasmuch as this is a Pre-Trial Investigation, the charges were not discussed with the defendant when he was interviewed.

CRIMINAL RECORD

JUVENILE

A check with the local office of the Juvenile Services Administration revealed no juvenile record.

ADULT

INSTITUTIONAL/PAROLE AND PROBATION HISTORY

The defendant has been in custody since his arrest and he acknowledges some institutional problems. There have been Incident Reports and he notes a few encounters with several guards. On November 13, 1988, he was placed in isolation after threatening suicide and a sheet was reportedly found on his window grate. As a result thereof, he was placed in isolation until he was seen by the jail physician. On 12/24/88, he was charged with being verbally abusive and argumentative, and, as a result, he spent time locked in. On 1/8/89, he was observed banging his head on a rail and, after becoming verbally abusive toward the officer, he was locked in for five days. Thereafter, he was charged with extending a personal visit and, for this, he lost certain privileges.

There is no known record of confinement beyond the foregoing and there is no known record of formal supervision.

PERSONAL HISTORY

The defendant reports little contact with his natural parents and he spent most of his life in foster care. He estimates he lived in seven or eight different homes, the longest period of which was with a woman who is now deceased. He describes his background as generally "disgusting," but he believes, somehow he "will get it together." He notes that he has lived on the streets since he was sixteen, although occasionally he was able to rent a room. He speaks highly of his half-sister, Charlene, who reportedly shared some of his misery as a youth

and they have maintained contact during his period of confinement.

Ms. Charlene Wiggins was interviewed on 7/23/89 and she confirmed that she and the defendant were raised together in foster care. However, she reports that they lived in only three homes, the longest of which was nearly ten years, and, although somewhat strict, the last foster mother, Mrs. Lenore Miner, provided "a nice home with a roof over our heads." As for her contact with the defendant, she notes that she saw him every three or four months prior to the arrest, and, although she has not been able to visit him at the detention center, she has talked with him by telephone on a number of occasions. She also reports that his natural mother, who has no contact with him, is an alcoholic, but she has no information on his natural father. She also is unaware of any substance abuse history or psychiatric intervention.

EDUCATION

The defendant reports that he quit school in grade ten at Northwestern High after deciding to go to work to support himself. He notes that he became "lost" after skipping several grades in elementary school and thereafter, "everything was down hill." He also reports failing the G.E.D., but present plans call for him to complete his education in the near future.

EMPLOYMENT

NAME/ ADDRESS	DATES	NATURE/ EARNINGS	REASON LEFT
Incarcerated	September, 1988 -	–	–

	present		
Joseph Winberg Clark Manor Apartments, Woodlawn, Md.	9/14/88 - 9/20/88	Painting, $4.50/hour	"Fired"
Backfin Restaurant, Route 140, Baltimore, Md. 21208	6/88 - 7/88	Dishwasher, $4.10/hour	"Quit"
St. Paul Security, Baltimore, Md.	3/88 - 5/88	Security, $4.00/hour	"Quit"
Madison Contractors, Baltimore, Md.	4/86 - 8/87	Security, $4.75/hour	"Quit"
USF&G 100 Light St., Baltimore, Md.	1980 - 1984	Porter, $5.00/hour	"Quit"

As for the painting job, briefly held in September, 1988, the defendant reports he was fired when his boss discovered that he lacked the necessary skill to perform that type work.

A spokesperson for the Backfin Restaurant verified the brief period of employment in 1988 and indicated that the defendant was "a good worker who was always here on time."

The Chesapeake and Potomac Telephone Company has no

listing for St. Paul Security and Madison Contractors did not respond to a message left on their recorder.

A spokesperson for USF&G reported on 7/21/89 that the defendant worked there as a porter from 1982-1984, but no additional information could be released.

HEALTH (Physical and Mental)

The defendant describes his health as "excellent" and there are no problems at this time.

He describes himself as a light drinker and he reports experimenting with Marijuana on one occasion ten years ago. He recalls becoming "paranoid" after that experience and, since then, he reports no substance abuse.

The defendant recalls being taken to a counselor when he was age ten for what he describes as "confusion," but he recalls being told that "nothing was wrong." Since then, there have been bouts of depression, which have become more frequent since he has been confined, but he notes that he recently found some degree of tranquility through religion. There is no psychiatric report in his jail file, notwithstanding the reported suicide attempts, and he denies ever being evaluated or treated by a psychiatrist. He does note, however, that a preacher visited him on three occasions but complained on the last visit that the defendant was keeping him from a tennis match.

FINANCIAL

ASSETS	**OBLIGATIONS**
None	None

/s/ John Mellendick, Jr. 7/27/89
John M. Mellendick, Jr. Date
Field Supervisor I

/s/ C. Albert Henry 7/27/89
C. Albert Henry Date
Parole/Probation Agent Senior
Division of Parole/Probation
New Courts Building
401 Bosley Avenue
Towson, Maryland 21204

In the Circuit Court for Baltimore County, Maryland

State of Maryland
v. Case No. 88-CR-5464
Kevin Wiggins,
Defendant

Reporter's Official Transcript of Proceedings
Towson, Maryland
August 1, 1989

Before:
Honorable J. William Hinkel, Associate Judge

* * * *

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13 THE COURT: Mr. Wiggins, would you stand up
14 for a moment, sir? Yesterday I received a letter from
15 your counsel Mr. Schlaich and Ms. Nethercott advising the
16 court that you intend to give up your right to a jury
17 trial with respect to the guilt or innocence stage of this
18 proceeding and that you want your case to be determined by
19 the court sitting without a jury; is that correct?
20 THE DEFENDANT: Yes, sir. The reason why is
21 because I feel as though by having the death penalty over
22 my head, they are going to pick the jury, and they are
23 going to be people for the death penalty, and I think it's
24 prejudice for that because they are more likely to go for
25 the State and that's why I'm going for a judge.

* * * *

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THE DEFENDANT: My decision is to go with a judge because I have the death penalty over my head, and I feel as though the people that agree to the death penalty are more likely to go with the State, and I feel as though, you know, that's a prejudice in that area.
THE COURT: I understand then that you are giving up your right to a jury trial?
THE DEFENDANT: Yes, sir.
THE COURT: For this phase of the proceeding?
THE DEFENDANT: Yes, I am.

* * * *

In the Circuit Court for Baltimore County, Maryland

State of Maryland
v. Case No. 88-CR-5464
Kevin Wiggins,
Defendant

Reporter's Official Transcript of Proceedings
Towson, Maryland
August 3, 1989

Before:
Honorable J. William Hinkel, Associate Judge

* * * *

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MR. SCHLAICH: Now, let me ask you have you made a decision as to whether to testify or to choose to elect to remain silent?
THE DEFENDANT: Yes, I have.
MR. SCHLAICH: What is your decision?
THE DEFENDANT: I made a decision. I want to tell the judge the reason why I'm going to say, okay, that I don't want to testify is for the point that everything I wanted to say I had already said to my lawyers. I don't feel as though I need to say anything else, and I let them represent me, Ms. Nethercott and Carl.

* * * *

In the Circuit Court for Baltimore County, Maryland

State of Maryland
v. Case No. 88-CR-5464
Kevin Wiggins,
Defendant

Reporter's Official Transcript of Proceedings
August 4, 1989
Towson, Maryland

Before: Honorable J. William Hinkel, Associate Judge

* * * *

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THE COURT: I suppose I should start by saying that there are certain things in the case that the State and the defendant need to know that I do not consider as real evidence in the case.

As a fact finder, it is my responsibility to weigh all of the evidence which is available to the State and favorable to the defendant, favorable including all those reasonable inferences that can be drawn from the evidence.

So you all don't wonder throughout what I am about to say, let me tell you that John McElroy is not believed by this court. I do not believe that the defendant made the statement to McElroy which McElroy atributes to the defendant. I just don't believe it.

With respect to Christopher Turner, I'm persuaded even more now than I was when I ruled on the motion that he was competent to testify. As he went along, I became even more certain that he was competent to

testify, but as he went along, I became more and more convinced that he was not trustworthy, and I do not believe that the defendant gave a statement to Mr. Turner

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confessing this crime. I do not believe his statement that Turner attributes to the defendant was, in fact, made.

The evidence persuade me to these facts:

That the defendant was employed at the Clark Manor apartments for the subcontractor Robert Weinberg or the Weinberg family anyway. He was there working in and around Apartment F of 1951 Woodlawn Drive. I'm persuaded that the defendant knew who Mrs. Lacs was. I'm further persuaded that he knew that the red orange Chevette was her car.

The testimony of Chianti Thomas is not strong as a positive identification of the defendant, but when taken with the other evidence that is without any serious dispute, I'm persuaded that she saw him there, but even without Chianti Thomas's testimony or photo ID, I'm persuaded that Mr. Wiggins was at the apartment area. No one saw him in the apartment but he was seen in the hallway. Seen outside. He worked there. He was there at a relevant time.

I find also as a fact that the defendant was in possession of Mrs. Lacs' automobile and at least two of the credit card on the evening of Thursday, September 15th. This court rejects as untrue what is stated in Mr. Wiggins's written statement given to Detective Crabbs. I

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do not believe that he came upon that vehicle at 1 o'clock on the parking lot of Roy Rogers. That is just not so. He came into possession of that automobile and those credit cards and for that matter, the ring, on the evening of September 15th. That I find as a fact.
Now, a lot has been made over the exact time of death. I don't know the exact time of death. I am persuaded, however, from all of the evidence that the death of Mrs. Lacs did not occur sometime between 9 p.m. on September 17th and 3:00 a.m. on 9 - 17, which would be the 18 hour period that was testified to by Dr. Kauffman. I am persuaded that it occurred on Thursday the 15th of September.
The cause or the manner of death is undisputed, and I find from all of the evidence that the manner of death was homicide. I don't intend to make a finding of fact as to every piece of evidence that has been introduced, but I do believe it is important to state what other facts I find to be true.
Ms. Elgert testified that Mrs. Lacs was wearing a white blouse and a blue skirt on Thursday. On Saturday she was wearing a white blouse and a blue skirt. That's not only in testimony. Although it was called a bluish green skirt, the photographs indicate a blue skirt, the color photographs. She either saw that on Thursday,

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or she predicted that the next day Mrs. Lacs would wear that same combination. I find as a fact that she was wearing it on Thursday and that Mrs. Lane was mistaken when she gave a missing person's report that it was a red

dress.
I also find that the credit cards were, as I said, not found in the car but were taken from the apartment. There's ample evidence in this case to support that. The ransacking of the apartment took place at the same time that the property was taken. The credit cards were taken from the apartment as well as I am persuaded that the keys came from the apartment. That all occurred on Thursday.
We know that the car was gone, and we know that the credit cards were in the possession of the defendant on Thursday. The ransacking took place on Thursday. How the defendant entered the apartment is not known, and it makes no difference, for I'm persuaded that he entered the apartment and that he was the one who took the property.
As close as I can come to the time that it occurred is that it had to occur sometime after the defendant finished work on Thursday at the time he appeared with the automobile and credit card at the home of Geraldine Armstrong. That leaves to be explained the

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testimony of Ms. Vassar who says she spoke with Mrs. Lacs on Friday about 10 or 10:30 in the morning. The State, of course, vouches for its own witnesses, but I don't believe that Mrs. Vassar correctly remembers. All of the other evidence in this case is so overwhelming that it is not so.
The defendant, of course, is in possession of recently stolen property. The defense argues that any presumption that he is the robber is rebutted by the testimony of Ms. Vassar, but my decision is not based on

any presumption arising from the recent possession of stolen property, but my belief and fact finding and decision is based upon all the evidence that I have weighed in this case and not by any presumption. I'm persuaded beyond a reasonable doubt that the defendant caused the death of Florence Lacs and that this was done wilfully, deliberately and premeditatedly. I'm further convinced beyond a reasonable doubt that the defendant committed the crime of robbery?
THE DEFENDANT: He can't tell me I did it. I'm going to go out.
THE COURT: That during the commission of the robbery, the defendant killed Florence Lacs?
THE DEFENDANT: I didn't do it. He can't tell me I did it.

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THE COURT: Therefore, the verdict is guilty of the first and second counts. First count being first degree murder and the second count being robbery. I'm further convinced beyond a reasonable doubt that the defendant committed the crime of theft, the taking of the credit card and that he committed the crime of theft by taking the automobile of Mrs. Lacs; therefore, the verdict is guilty as to the fourth and fifth counts. The sixth count is also in reference to the automobile and is merged into the fifth count.
MS. BROBST: Your Honor, on the 29th of November the State notified the defendant of its intention to seek a sentence of death in this case and in the alternative, a sentence of life without the possibility of parole.
THE COURT: Mr. Schlaich.

MR. SCHLAICH: Your Honor, first of all, I would note that there has been a pre-sentence investigation started in this case but not completed is my belief. Furthermore, Your Honor, the defense has not completed its preparation to take this case to a sentencing phase.
We have, obviously, spent a long amount of time preparing the guilt/innocence part of this trial. There are many things to do, including the examination of

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Mr. Wiggins by various experts and notifying the State of those expert opinions as well as concluding various statistical studies and things that we will attempt to enter into evidence and that I do believe are admissible into evidence, and for all of those reasons, Your Honor, we are not prepared to go to sentencing today. I would ask for a date sometime in September or thereafter.
THE COURT: I believe that's reasonably necessary.

* * * *

STATE OF MARYLAND
vs.
KEVIN WIGGINS

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
CASE NO. 88 CR 5464

MOTION FOR BIFURCATED SENTENCING PROCEEDING

Defendant, Kevin Wiggins, by his undersigned counsel, moves this Court for an Order bifurcating the sentencing trial in this case, and in support thereof says:

1. Pursuant to Maryland statute, the State must prove in sentencing trial in this matter (a) that the defendant was a principal in the first degree and (b) the existence of aggravating factors which outweigh the mitigating ones.

2. A sentencing hearing that simultaneously tries the issues of principalship and aggravation/mitigation will result in the admission of evidence with respect to the latter issues which is prejudicial and inadmissible as to the former.

3. In order to protect the defendant's rights under the United States Constitution and the Maryland Declaration of Rights, and to comply with the terms of the Maryland sentencing statute, the sentencing trial should be bifurcated to require the determination of the principalship issue prior to the introduction of evidence which is relevant only to the aggravation/mitigation issue.

4. Bifurcating the sentencing will not unduly burden the Court nor unfairly prejudice the State.

5. For these reasons, and those set forth more fully in the memorandum submitted in support of this motion and

incorporated herein, defendant's motion for bifurcation should be granted.

WHEREFORE, defendant, Kevin Wiggins, requests that the Court enter an Order bifurcating the sentencing trial in this case into (1) a proceeding to determine whether the defendant is a principal in the first degree so as to qualify for the death sentence, and (2) a proceeding to determine the sentence which defendant will receive.

Respectfully submitted,

/s/ Michele Nethercott
Michele Nethercott
Assistant Public Defender
500 Virginia Avenue
Towson, Maryland 21204
321-2990

STATE OF MARYLAND
vs.
KEVIN WIGGINS

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
CASE NO. 88 CR 5464

MEMORANDUM IN SUPPORT OF MOTION
FOR BIFURCATED SENTENCING PROCEEDING

Defendant, Kevin Wiggins, by his undersigned counsel, submits this memorandum in support of his motion for a bifurcated sentencing proceeding.

Introduction

Defendant, Kevin Wiggins, was convicted following a Court trial presided over by the Honorable J. William Hinkel of the first degree murder of Florence G. Lacs on August 4, 1989. Sentencing has been scheduled to commence on October 10, 1989.

Argument

Capital sentencing proceedings involve two distinct stages. First, under Article 27, Sections 412 and 413 of the Maryland Code (1957, 1986 Repl. Vol.), the State must prove beyond a reasonable doubt that the defendant was a principal in the first degree murder of which he has been convicted. *Calhoun v. State*, 297 Md. 563, 468 A.2d 45 (1983). A first degree principal is the immediate perpetrator of the crime who either by his own hand, or through the agency of some means, causes the death of another. *Bowers v. State*, 306 Md. 120, 507 A.2d 1072 (1986) (construing Maryland Code Article 27, Section 413(e)(1) [1957, 1982 Repl. Vol.]). In addition, Section (f) of Article 27, Section 413 specifies that prior to any consideration of mitigating evidence that sentencer must be persuaded beyond a reasonable doubt of the existence of an aggravating

circumstance.

If the trier of fact finds that the defendant was a principal in the first degree and finds the existence of an aggravating factor, the sentencer is then directed to weigh any aggravating circumstances established by the defendant against the aggravating factor. If the trier of fact finds by a preponderance of the evidence that the aggravating circumstances outweigh the mitigating circumstances, the sentencer is then authorized to impose the death penalty. See *Stebbing v. State*, 299 Md. 331, 473 A.2d 903 (1984); *Calhoun v. State*, 297 Md. 563, 468 A.2d 45 (1983).

A sentencing hearing that simultaneously tries the issues of principalship and mitigation/aggravation will result in the admission of evidence with respect to the latter issues which is inadmissible as to the former. Highly prejudicial evidence such as prior criminal convictions and information about the defendant's background and character which may be admissible in certain circumstances to prove aggravating circumstances or disprove mitigating circumstances[1], should not be admitted to prove that the defendant was a principal in the first degree. See *Tichnell v. State*, 287 Md. 695, 415 A.2d 830 (1980) (evidence of other crimes not admissible to show that defendant committed the charged offense. If the jury is exposed to this evidence prior to their determination of principalship, the resulting prejudice will violate Mr. Wiggins' right to a fair trial.

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[1]In the sentencing phase of a death penalty case, evidence of prior convictions, pleas of guilty and pleas of nolo contendere to crimes of violence might be admissable. Maryland Code, Article 27, Section 413(c)(1)(iii) (1957, 1986 Repl. Vol.). See also *Scott v. State*, 297 Md. 235, 465 A.2d 1126 (1983).

The Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and Articles 21 and 24 of the Maryland Declaration of Rights, guarantee all citizens due process of the law, and a full and fair trial by an impartial jury of their peers.[2] Fairness is a concept which is inherent in the Constitutional right of due process. *Massey v. Moore*, 348 U.S. 105, 99 L.Ed. 135, 75 S. Ct. 145 (1954). Failure to observe fundamental fairness deprives a defendant of due process, which is at the heart of the justice system. See *Lisenba v. California*, 314 U.S. 219, 86 L.Ed. 166, 62 S. Ct. 280 *reh. den.* 315 U.S. 826, 86 L.Ed. 1222, 62 S. Ct. 620 (1942). In addition, Article 25 of the Maryland Declaration of Rights and the Eighth Amendment of the United States Constitution require that Mr. Wiggins be afforded a capital sentencing proceeding that produces a reliable verdict free of the influence of improper and arbitrary factors.

The principalship phase of the sentencing hearing is procedurally and substantively similar to the guilt-innocence phase of a capital trial. The standard of proof, guilt beyond a reasonable doubt, is the same standard that the State must meet during the guilt-innocence phase. Traditional rules of evidence must be followed in both stages to exclude hearsay and equally unreliable evidence, including evidence of the defendant's prior criminal record and evidence of his character. See *Tichnell v. State*, 287 Md. 695, 415 A.2d 830 (1980).[3]

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[2]A fundamental right guaranteed by the Fourteenth Amendment is the right to a fair trial. *Drope v. Missouri*, 420 U.S. 162, 172, 95 S. Ct. 896, 904, 43 L.Ed. 2d 103 (1975).

[3]In non-capital cases, all the substantive issues involving the guilt or innocence of the the defendant are examined in the guilt stage of the trial. Strict adherence to evidentiary rules is unnecessary in a regular sentencing hearing because the defendant is no longer at risk from the admission of

The aggravation/mitigation phase of the capital sentencing hearing contrasts sharply with the principalship phase. During the aggravation/mitigation phase of the sentencing hearing, the jury is permitted to consider all relevant evidence. In the case at bar, the State may attempt to introduce evidence of the defendant's background and character. Without bifurcation, this evidence, which would not be admissible to prove that Mr. Wiggins was the principal in the murder of Florence Lacs, will be heard by the jury before they determine principalship.

Cautionary instructions to a jury to ignore the evidence admitted regarding aggravation and mitigation when determining principalship cannot possibly protect Mr. Wiggins from the jury's subconscious use of the inadmissible and prejudicial evidence. Jurors cannot realistically be expected to ignore evidence presented by the State in aggravation when they consider whether the defendant was a first degree principal. Fair consideration of the principalship issue by the jury necessitates a trial on the issue of principalship untainted by inadmissible hearsay and irreparably prejudicial evidence. Failure to bifurcate this capital sentencing hearing will violate Mr. Wiggins' rights to due process and a fair and impartial trial.

Jurors in a capital sentencing proceeding must be guided by objective standards but a unitary proceeding which intermingles discrete classes of evidence and burdens of proof serves only to confuse jurors and risks an erroneous arbitrary imposition of a death sentence. See *Mills v. Maryland*, 486 U.S. ___, 100 L.Ed. 2d 384 (1988).

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prejudicial evidence. See *Smith v. State*, 308 Md. 162, 517 A.2d 1081 (1986).

In addition to Constitutional guarantees, the Maryland death penalty statute also requires a bifurcated sentencing hearing. Maryland Code, Article 27, Section 413(e)(i) (1957, 1986 Repl. Vol.) states that a defendant must be guilty of murder as a principal in the first degree *before* subjecting that defendant to a death penalty sentencing proceeding. Section 413(a) states,

> If a *person* is found guilty of murder in the first degree, . . . , a separate sentencing proceeding shall be conducted as soon as practicable after the trial has been completed to determine whether he shall be sentenced to death. (emphasis added)

Section 413(e)(i) defines the terms "defendant" and "person" as being a principal in the first degree.

The statutory language clearly means that a person can be subject to a death penalty sentencing hearing only after he is found to be a principal in the first degree. Attempting to satisfy this requirement later in the sentencing proceeding by allowing the jury to consider evidence which would not have been admissible at the trial would violate the statute. *Colvin v. State*, 314 Md. 1, 548 A.2d 506 (1988) (Blackwell, J., dissenting).

In a variety of settings, bifurcation has been recognized as a legitimate and convenient method of insuring a fair proceeding. Under Maryland Rule 2-503(b) governing civil actions, the Court may, on motion from counsel or on its own initiative, order a separate trial of any issue or claim. The Court of Appeals has recently endorsed this procedure with respect to the defense of insanity in a criminal case. *Treece v. State*, 313

Md. 665, 547 A.2d 1054, 1064 (1988).[4] On July 17, 1989, the Honorable James Sfekas granted a defense motion for a bifurcated proceeding on the issue of principalship in the case of *State v. Jones*, CR 843998.

The bifurcated sentencing proceeding proposed by the defendant will not prejudice the State or encumber the proceeding. The jurors would first hear all the relevant, admissible evidence on the first degree principalship issue, at which time the State may attempt to prove beyond a reasonable doubt the principal involvement of Mr. Wiggins. If the jury determines that the defendant was a principal in the first degree of the murder of Florence Lacs, the State may then present relevant and admissible evidence to attempt to prove beyond a reasonable doubt the existence of aggravating factors. After weighing the evidence of aggravation and mitigation, the jury will be able to render a fair and impartial judgment free of irrelevant and prejudicial evidence.

The bifurcated sentencing proceeding may also serve to reduce the length and complexity of the trial in this case. If the jury concludes that the defendant is not guilty of principalship, the proceeding will be concluded since a death sentence cannot be imposed in those circumstances. Employing a bifurcated proceeding presents no prejudice to the State.

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[4]In response to the Court of Appeals decision in *Treece v. State*, 313 Md. 665, 547 A.2d 1054 (1988), the Standing Committee on Rules of Practice and Procedure proposed a new Rule 4-314. The proposed rule entitles the Defendant or the State to request a bifurcated trial, under certain circumstances, where the issue of criminal responsibility will be determined separately from the issue of guilt. 16 Md. Reg. 620 (March 10, 1989).

Conclusion

In a capital case, the severity of the potential punishment warrants precautionary measures above and beyond those employed under other circumstances. A bifurcated sentencing proceeding is the only means to protect a defendant's constitutional rights. Furthermore, Article 27, Section 413(e) of the Maryland Code requires bifurcation of this proceeding.

Bifurcation serves the interest of justice in a fair trial. It is neither unduly burdensome to the Court nor unfairly prejudicial to the State. Defendant's motion should be granted.

Respectfully submitted,

/s/ Michele Nethercott
Michele Nethercott
Assistant Public Defender
500 Virginia Avenue

In the Circuit Court for Baltimore County

State of Maryland
v. Case No. 88-CR-5464
Kevin Wiggins,
Defendant

Reporter's Official Transcript of Proceedings
Wednesday, October 11, 1989
Towson, Maryland

Before:
The Honorable J. William Hinkel, Judge

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MS. NETHERCOTT: Your Honor, I think at this point perhaps I would proceed on the defendant's motion for bifurcation, I think might be the next logical.
THE COURT: I have it now.
MS. NETHERCOTT: Your Honor, I think all the contentions with regard to this are pretty comprehensively outlined in the motion. Just like to clarify for the record that it's the defense position that bifurcation is entirely consistent with the statutory language. Statutory language says that, before consideration of the mitigating and aggravating factors, that the fact finder must be convinced beyond a reasonable doubt with regard to both principalship and proof of the aggravating circumstance.
I also believe that under Maryland law the

evidence admissible as to that phase of the proceeding would be that the State would be bound by the same rules of evidence that they would be in the guilt/innocence phase. The problem with not having

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a bifurcated proceeding is that, essentially, the State is able to get in evidence that would come in at another section of this proceeding where other types of evidence would be admissible, such as hearsay evidence, a Pre-Sentence Investigation Report, evidence of that nature, which is not only not relevant to the determination the jury must make on principal and the aggravating factor, but the real problem from the defense standpoint, and the specific factual situations presented by this case, is that it's prejudicial and therefore it's violating not only the Declaration of Rights and Maryland law, I believe it poses a problem in terms of federal constitutional law, specifically Mr. Wiggins' right not to have this determination affected by any random or arbitrary factors, factors that are not intended to be considered by the fact-finder with regard to the principalship and the findings as to the aggravating factor.
To be very specific about it, Your Honor, in this case I can proffer to the Court that, in a non-bifurcated proceeding, the defense is in a position of coming forward with evidence regarding psychological history on Mr. Wiggins, including aspects of his life history, including a diagnosis

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of a personality disorder, including diagnosis of some retardation.
The problem, Your Honor, is that all of that evidence which is relevant to mitigation in both a statutory and non-statutory sense is not relevant at all on the issue of principalship. And the danger is, if the jury hears all of this, that they're going to use that evidence in coming to a conclusion with respect to principalship and coming to a conclusion with respect to proof on the aggravating factor.
Furthermore, we have the additional problem that, even if the defense does not raise issues such as future dangerousness, apparently under Maryland law the State is free to do that.
Therefore, we have not only our own evidence which is going to essentially put us in a position where our mitigating factors can turn into aggravating factors, I think that that is a discrete constitutional problem that was addressed in Zant v. Stephens, that there's a federal constitutional prohibition against the use of mitigating factors as aggravating factors and also the use of factors such as the defendant's exercise of his right to trial, his exercise of his right to remain silent, as being

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used against him as some kind of aggravating factor. That's a situation that's presented here.
I submit that that problem is easily cured by a bifurcated proceeding. And I would submit it's

entirely consistent with the statutory language. It's the best way to insure protection against all of the dangers I outlined here. Finally, Your Honor, I would submit it's in the interests of judicial economy. If the fact finder is not convinced that the State has proven principalship, that ends the proceeding, rather than having us here for hours or perhaps days discussing evidence that isn't really relevant to that at all.

THE COURT: You would only bifurcate on the issue of whether the defendant was a principal in the first degree in murder and not the aggravating circumstance of whether there was a murder committed in the course of a robbery? It would seem to me that if you're going to bifurcate, that those two ought to be together.

MS. NETHERCOTT: Court's indulgence for a second, Your Honor. Your Honor, the factual context of this case, we want to bifurcate the case on the principalship issue. One proceeding to determine that, separate proceeding --

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THE COURT: Principal to the murder, first degree murder. And what evidence would come in on that issue?

MS. NETHERCOTT: With regard to the principalship issue?

THE COURT: Yes. In this first stage, this first phase of the proceeding?

MS. NETHERCOTT: Well, whatever evidence the State intends to prove that proposition.

THE COURT: And wouldn't all the evidence

concerning whether there was a robbery come in?

MS. NETHERCOTT: Yeah, I think in this factual context, it would.

THE COURT: Then why shouldn't that evidence all go to the jury at one time so that they can answer both questions? One is the principalship, and if they answer yes to principalship, then they go on to question two as to whether or not the aggravating circumstances there are proven beyond a reasonable doubt, before you get to the part that you say is prejudicial to your client, Mr. Wiggins.

Otherwise, if you present only the principal in the first degree question and admit all the evidence concerning the robbery would have to

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come, whatever evidence concerning the robbery would have to come in, then the State would be obliged in phase two to reintroduce or put on that same evidence again to prove the aggravating circumstance.

MS. NETHERCOTT: Right. If I understand what the Court is saying.

THE COURT: What I'm trying to say is I don't see any harm to your client.

MS. NETHERCOTT: Three bifurcations as opposed to two bifurcations?

THE COURT: No. You want to take this, you want to sever it right after question one. I'm suggesting to you, if you do it that way, I don't know that I've decided to do that -- I'm going to hear from the State -- but if you decide to do that,

the evidence presented in that phase also has to be re-presented because it has to do with the aggravating circumstance.
If you put principalship and aggravating circumstance in the first phase, the same evidence is presented as if you didn't include the two. What harm or what would be done in that phase, including both of them, that would be detrimental or harmful to your client?

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MS. NETHERCOTT: Well, I think, Your Honor, that quite frankly in this case I wouldn't object to one proceeding for principalship and existence of the aggravating factor are determined.
THE COURT: As phase one?
MS. NETHERCOTT: As phase one.
THE COURT: And if you get two yes answers, you move to phase two. Otherwise you would go --
MS. NETHERCOTT: Right. My objection is the intermingling of this other evidence regarding mitigation and aggravation.
THE COURT: Well, that's what I thought it was. Let me hear from Ms. Brobst.
MS. BROBST: I have two problems. The first is that we don't have any statutory or case authority for this. And I see this as becoming an absolute procedural nightmare.
Does the State then get two openings in which first we argue, we tell them that we're going to prove the principal and that the murder was committed in the course of a robbery? Then after we

get a ruling on that, do we stand up and tell them about the weighing process? Because I could see an objection to that because now the State's had two

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openings.
Two things. First of all, the rule and statute to me, and not to Ms. Nethercott, are fairly clear that this is done at one time. And I mean, this is the law that we have and that we're instructed to follow.
The other thing is, to me there comes a point in time when you have to assume the jury's going to do what they're instructed to do. We assume that all the time when we take cases to juries. And they will, I assume, be instructed that you have to first consider whether he's a principal in the first degree, and answer that. Then go to the next step, which is what the rule lays out.
Although I understand her factual argument, we just don't have any legal authority for that at all. I think we would be in a bad way if we tried to figure that all out, because we have no instruction. The instruction we have is to the contrary.
THE COURT: Cases are bifurcated fairly often. I mean, it's not done every day, but there is some guidance on how to do it. Admittedly, I'm only aware of Judge Sfekas having granted the request to bifurcate.

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MS. BROBST: And the only other area that comes immediately to mind is in the area of insanity. But when that happens, we've got rules on it. We've got law. We've got instructions. And we don't have those here.
Additionally, Your Honor, now we have the issue which is attendant to the statutory scheme as we have it of defendant's allocution.
Now, that doesn't fit into the suggested bifurcated proceeding. Would he have a right to allocute as to principal and aggravating circumstance and then re-allocute?
THE COURT: Look, any time you tamper with a statute --
MS. NETHERCOTT: There's always a first.
THE COURT: Very, very difficult. My question to you is the same as to Ms. Nethercott. If a bifurcation is to be granted, does it make sense to do principal and the aggravating circumstance together, as I said to Ms. Nethercott? I'm not suggesting that's the way I'm going to rule on it. But I was saying that before I even heard the State's position. Let me hear a response.
MS. BROBST: If you're asking me whether I

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think it makes sense, I think it would make sense to proceed on the issue of principal first and aggravating because those are questions dealing with the crime in a kind of vague way as opposed to

questions dealing with the defendant, which are the mitigating circumstances in the weighing process. However, if the Court is inclined to grant a bifurcated proceeding, the State would request it do so in the way requested by the defense, because then I don't think we're going to have an objection from the defense and then we won't have as many problems should the case be appealed later on this issue.
THE COURT: Okay. Ms. Nethercott, anything else?
MS. NETHERCOTT: No, Your Honor, other than just the, I'm sure it's clear. But the other problem with the non-bifurcated proceedings, that we're mixing different evidentiary standards. As much as it may present procedural problems, I think that in a case of this magnitude, I think that has to go to the protection of Mr. Wiggins.
THE COURT: I'm thinking about it. I'm not going to rule right now. I'm thinking about whether I'll bifurcate.

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Did I understand you to say that you had no objection if the two were put together, that is the aggravating and the principal questions?
MS. NETHERCOTT: I believe that is my position. If the Court can indulge me for one moment, I'll make sure that it's both our positions. Thank you, Your Honor. My position is that we would be happy with a ruling that bifurcates on the principalship, that would not require the State to remove the aggravater.

THE COURT: That you're saying that the
first two questions --
MS. NETHERCOTT: Right.
THE COURT: -- as to the principalship
question and the aggravating circumstance question
be submitted in phase one of a bifurcated
proceeding. And the State opposes that, is that
correct?
MS. BROBST: The State is opposed to that,
yes, Your Honor, in principle. However, if the
Court is inclined to grant that, we would request it
be granted in the way the defense requests, if you
follow me.
MS. COFFIN: Which she has just agreed to.
MS. BROBST: Right.

* * * *

In the Circuit Court for Baltimore County

State of Maryland
v. Case No. 88-CR-5464
Kevin Wiggins,
Defendant

Reporter's Official Transcript of Proceedings
Thursday, October 12, 1989
Towson, Maryland

Before:
The Honorable J. William Hinkel, Judge

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[THE COURT]
Mr. Kevin Wiggins, who is seated at trial
table, has been found guilty of the murder of
Florence Lacs in the first degree and the robbery of
Florence Lacs. The jury selected to hear this case
will be asked to decide whether Kevin Wiggins should
be sentenced to death or imprisonment for life
without the the possibility of parole or
imprisonment for life with the possibility of
parole.

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[THE COURT]
The State's Attorney's Office has filed a
notice of intention to seek the death penalty in
this case. The jury will determine the appropriate

sentence in this case.
One, many people feel strongly about the
death penalty. Some feel that the death penalty
should be imposed in every case of first degree
murder regardless of the facts and circumstances.
Others feel that the death penalty should never be
imposed regardless of the facts and circumstances.
Do you have any strong feelings one way or the
others?
Two, would your feelings about the death
penalty prevent you from sentencing the defendant in
accordance with the sentence -- excuse me -- in
accordance with the evidence and the law?
Three, after listening to the evidence and
applying the law, if you were convinced that the
appropriate sentence should be death, would you be
able to vote for the death penalty?
Four, on the other hand, after listening
to the evidence and applying the law, if you were
not convinced the appropriate sentence should be
death, would you vote for life imprisonment?

* * * *

In the Circuit Court for Baltimore County

State of Maryland
v. Case No. 88-CR-5464
Kevin Wiggins,
Defendant

Report's Official Transcript of Proceedings
Friday, October 13, 1989
Towson, Maryland

Before:
The Honorable J. William Hinkel, Judge and a Jury

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MS. BROBST: Thank you, Your Honor. May
it please the Court, I would like to welcome you all
back and also take an opportunity to thank you very
much for your patience with us yesterday during a
very arduous voir dire process.
Additionally, I would like to thank you on
behalf of myself, Ms. Coffin, and the defense
attorneys in this case for agreeing to take on this
very serious decision. I know it's going to be a
difficult one for you to make and we appreciate your

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time, your patience and your attention.
I would like to talk for a moment about
why we're all here. We're here because of Florence
Lacs. Mrs. Lacs was 76 years old. She was widowed,

lived alone in the Clark Manor Apartments. She lived in Apartment Number 1951-C, Woodlawn Drive, which is in the Woodlawn section of Baltimore County.

Mrs. Lacs was a very active lady. She had a close circle of friends. She enjoyed playing cards with them. They would get together for lunch. And she was a member of the Senior Citizens Group. But Mrs. Lacs was not given an opportunity to live out her life in peace and tranquility as we would expect one should in their golden years because Mrs. Lacs died at the hands of the defendant, Kevin Wiggins --

THE DEFENDANT: I'm not going to take that because I didn't kill that lady. I'm not going to sit there and take that. I didn't kill that lady. I'm not going to sit there and take that.

THE COURT: Go ahead, Ms. Brobst.

MS. BROBST: -- who entered her home and brutally murdered her by drowning her in her own tub during the robbery of her property. He left her,

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exposed and humiliated, And as a final act of humiliation, he dumped her, sprayed Black Flag insect repellent on her body. He left her with her skirt hiked up around her waist and without any underpants on. Then he took from her a few precious valuables which she had been able to accumulate during her long life -- four credit cards, which Mrs. Lacs herself rarely used, a Citgo card, a Hecht Company card, a Sears credit card, and a J.C. Penney card.

He took her car keys because Mrs. Lacs still drove. She drove a little, 1980 orangey-red, kind of a tomato-red Chevette. He took her keys with their letter F key holder. And he also took from her her engagement ring which she kept in the jewelry box on her bureau in her bedroom. He dumped out her purse on her bed and ransacked every inch of that apartment, taking out drawers and dumping them on the sofa, pulling off the sheets of the bed to take anything of value which he could find. And then he left.

Now, members of the jury, the defendant has already been convicted of that murder beyond a reasonable doubt. He's been convicted of the robbery. And it will be your job to determine what

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is the appropriate sentence for him to receive as a result of his actions on that day.

Now, let's start at the beginning. Before I do that, let me just tell you that I know you're all legitimately concerned about this decision you're going to have to make. But you're not going to have to make it in a vacuum. You will be given a form to fill out that will explain to you certain criteria which must be met for a penalty of death. You will have that form and you will be able to take that back with you to the jury room during your deliberations.

You will also have an opportunity to take all the evidence which the State and the defense, if it chooses, introduces, the physical evidence will go back with you. You won't have to recall it.

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17 You'll have it with you.
18 The judge will give you instructions on
19 exactly what you're supposed to do and how you're
20 going to apply the evidence that you hear in
21 determining the appropriate sentence. He'll tell
22 you that the State must first prove to you two
23 things beyond a reasonable doubt. One is that the
24 defendant was a principal in the first degree, which
25 means that by his hand Mrs. Lacs was killed, that he

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1 is the person whose actions caused her death.
2 Additionally, you will have to find beyond a
3 reasonable doubt that this murder occurred in the
4 course of the robbery, and you will receive
5 complicated and detailed instructions on that before
6 you're asked to make this decision.
7 When you find that those two things exist,
8 then you will go on to consider certain mitigating
9 circumstances that will be presented to you. Some
10 of those are called statutory mitigating
11 circumstances. Those will all be listed on the
12 form. One of those statutory mitigating
13 circumstances, the State concedes. We're telling
14 you right now it exists. And that is that the
15 defendant has not previously been convicted of a
16 crime of violence as defined by statute. So that
17 one you will have, that mitigating circumstance, and
18 it will be premarked for you. The rest you'll go on
19 to consider. You'll weigh the evidence. You will
20 decide whether those exist.
21 The defense also has a right to present
22 certain, what we call, non-statutory mitigating

23 circumstances. Those are things which you may
24 decide to weigh also in your, in your
25 deliberations. But those are things which is a

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1 two-step process. One you will decide, does it
2 exist, has it been proven by the defense by a
3 preponderance of the evidence, and two, is it
4 mitigating? Does this make a difference to me? Do
5 I think that this lessens his guilt?
6 After you have had an opportunity to
7 compile all this information, you will be asked --
8 MR. SCHLAICH: Your Honor, I note an
9 objection. May we approach the bench?
10 THE COURT: Yes.
11 (Counsel and defendant approached the
12 bench and the following ensued:)
13 MR. SCHLAICH: Your Honor, the State's
14 Attorney has incorrectly stated that mitigators go
15 to determining if it lessens the defendant's guilt.
16 THE COURT: You did say that. Do you want
17 to explain that to them?
18 MS. BROBST: Okay.
19 THE COURT: Back up.
20 MS. BROBST: Okay. Now, what's your
21 objection?
22 THE COURT: You said is it goes to lessen
23 his guilt.
24 MS. BROBST: I'm sorry. Okay.
25 (Counsel and defendant returned to trial

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tables.
MS. BROBST: Thank you, Mr. Schlaich. Mr. Schlaich pointed out that I misspoke. The mitigating factors would not go to lessening the defendant's guilt. He's been found guilty beyond a reasonable doubt. What I meant to say is that they would affect you in what sentence you should impose. And I misspoke and I thank Mr. Schlaich for his correction on that.
As I say, you would have to determine two things on the non-statutory mitigating circumstances and then you would weigh the aggravating circumstance and the principalship in the first degree against those mitigating circumstances. And if you're convinced by a preponderance of the evidence that the aggravating circumstance outweighs those mitigating circumstances which you or any one of you have found to exist, then the sentence in this case will be death.
As I say, all these things will be reiterated to you again at the end of the evidence.
Now, I'd like to talk to you about the State's case and what we're going to prove to you over the course of probably the next day, maybe day and a half.

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As I said, Mrs. Lacs lived at the Clark Manor Apartments in Woodlawn, 1951 Apartment C.
Now, you'll need to know and you'll see some photographs and a chart of this. But this is the

kind of entry level of this apartment building and on that level are C and, Apartments C, F and E.
Now on the 13th of September, 1988 --
she's killed on the 15th. On the 13th, the defendant, Mr. Wiggins, who used to live at the Clark Manor Apartments, shows up at the Clark Manor Apartments where he meets a Joseph Weinberg. Now, Joseph and his brother, Robert, are subcontractors who at the time were working in the Clark Manor Apartments doing some painting and sheet rock. And he asks and they offer him a job.
So he proceeds to start working for the Weinberg brothers. That's on September 13th. Now, on the 15th, the day, the last day that Mrs. Lacs had on this earth, the defendant, for some period of time, is working in Apartment F, the empty apartment right across from Mrs. Lacs' apartment, and he's in there for some period of time alone.
Then later that morning, he and Robert Weinberg are loading some sheet rock on to a truck.
Well, Mrs. Lacs' apartment overlooks the parking lot

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where they're loading the sheet rock and she peeks out the window and she sees that the truck is parked near her car. Well, Mrs. Lacs was concerned because she had planned to go to a Senior Citizens meeting that day and she had planned to do the driving. She was going to pick up her friends.
She couldn't tell whether the truck was blocking her car, so she calls out. Well, Mr. Weinberg doesn't hear her call out but the defendant does. And the defendant motions to Robert and says,

11 that lady's trying to get your attention. So they
12 both look up at Mrs. Lacs and she says, can I still
13 move my car, this orangey-red Chevette, and they
14 assure her that, yes, in fact, she can.
15 So at 10:30 that evening, she gets in her
16 Chevette and she goes to pick up two friends,
17 Genevieve Frank and Delores Elgert. She takes them
18 with her to the Senior Citizens meeting. They have
19 some lunch. After lunch, they stay around, they
20 play some cards and they're joking around and she
21 drives them home. She drops off Mrs. Elgert at
22 about 4:00.
23 The next thing that you will hear, the
24 next witness you will hear from is little Chianti
25 Thomas. She's a little girl who was visiting a

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1 friend in Apartment E at 1951 Woodlawn Drive. She
2 and her friend were leaving and they couldn't get
3 the door locked on Apartment E. Well, they knew
4 Miss Florence, as they refer to her, and they went
5 to her door to ask her if they could help her lock
6 the door -- they had done this before. And at that
7 time they see and hear a conversation between the
8 defendant and Mrs. Lacs and the defendant says,
9 thank you for watching my sheet rock for me. And
10 Mrs. Lacs says to the defendant, see, I told you
11 nothing would happen if you had me watch it.
12 Well, then Chianti gets her situation with
13 the lock straightened out and she leaves.
14 Well, at that time, ladies and gentlemen,
15 is when Mrs. Lacs was attacked by the defendant.
16 That's when he entered her apartment. There's no

17 signs of forced entry. That's when he ransacked.
18 That's when he killed her and that's when he dumped
19 the Black Flag insect repellent on her. And that's
20 when he stole her property and left.
21 Now, we know that in a number of ways, all
22 of which will become clear to you from the evidence
23 which you'll hear. But one of the ways is from a
24 witness named Geraldine Armstrong who was, at the
25 time, the girlfriend of the defendant, Kevin

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1 Wiggins, and who bears him no animosity. In fact,
2 they still write and visit.
3 And she says that she got home from work
4 -- she works at Social Security over in Woodlawn --
5 she got home from work at about 7, sometime a little
6 after 7, when the defendant comes over. Well, he is
7 driving an orangish-red Chevette, a car which she's
8 never seen before. So she says to him, where did
9 you get the car? He says, a friend gave it to me,
10 lent to to me, he says. Okay.
11 He says, would you like to go shopping?
12 Well, of course she leaves, she gets everything at
13 home squared away, and off they go to the Hecht
14 Company in Security Square Mall. And the defendant
15 has Geraldine Armstrong sign the name Florence Lacs
16 to credit card receipts in the Hecht Company. And
17 at 8:57 p.m., you will hear, they charge a
18 herringbone chain, value of $328; at 9:14 p.m., they
19 charge at the Lady's Sportswear Department, some
20 articles of clothing; and at 9:19 p.m., they charge
21 one Swatch watch. All the time, Mrs. Armstrong
22 signs the name of Florence Lacs. Then she says to

the defendant, I got to get going because I have to get home.
Well, she says to him, whose credit card

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is this? And he says, oh, it's either a cousin or an aunt of mine and don't worry, she said we can use it, it's okay.
So he takes her home and they arrange for him to pick her up to take her to work the next day at Social Security. So he shows up and at that time Mrs. Armstrong says to him, I don't feel well, I may have to leave work early today so I'll call you where you're working at the Clark Manor Apartments and let you know.
So as it comes to pass, he does pick her up early. He picks her up around noon and they leave. But she doesn't feel so sick that the two of them don't go shopping again. They again go to the Hecht Company. They go to the Penney's to the Fine Jewelry Department and they go out to Columbia Mall and charge some things at the Sears.
An interesting thing happens at the Penney's Fine Jewelry Department. They are such good customers that a Jeanetta Washington gives the defendant her card, her business card, because he's charging a lot of property. And because they purchased a diamond, she says, we're going to fill out a diamond certificate. You get a certificate when you purchase a diamond here.

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So she says to the defendant, what's your address, and he says 1951 Walnut Avenue. Now, this becomes important later because you will learn that the address the defendant was giving at the time was not 1951 Walnut Avenue -- 1951 being the address where the victim was killed. He lived at the time at 1013 Walnut Avenue, but the 1951 was on his mind when he filled out this diamond certificate.
The police, of course, have been everywhere for the people who are responsible for this crime and, of course, they have a bulletin out about the Chevette, the orangey-red Chevette. And they also have information that the credit cards are being used.
Well, Sergeant O'Neill is coming back from a full shift and he's coming down Windsor Mill Boulevard to go back to the station, Woodlawn Station, and leave for the day. And he's with another detective, Detective Coburn. And they look in front of them and they say, that's the car, that's the car everyone's been looking for. This is on September 21st.
So on September 21st, the car is stopped by Sergeant O'Neill and Detective Coburn. In the car is the defendant, Geraldine Armstrong, and their

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infant, their baby girl. He's taken from the car and he is held until homicide detectives can arrive.
Detective Crabbs arrives. Detective

Crabbs gives the defendant his rights pursuant to the Miranda warning and the defendant gives a statement. He gives a statement that will convince you beyond a reasonable doubt that he is the person responsible for this crime because he knows exactly what happened and he has an answer for everything. He says that he found the car on the Roy Rogers parking lot but he insists that he didn't find it until Friday, the 16th of December, of September, 1988, the day after she was killed. He says that he found the ring. He says that he found the credit cards, and he says that he did lie to Geraldine because he didn't want her to know, which is why he explained that he got these things from his aunt.

Additionally, the Crime Lab, who did the investigation at Mrs. Lacs' apartment after her death, did a thorough investigation and, of course, pursuant to that dusted for prints. They were unable to find any prints of the defendant. They did find some surfaces with smears on it.

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When the defendant is returned to Headquarters, he's patted down before he's put in a cell and they reach into his pocket, which is a customary procedure, and they find --

MR. SCHLAICH: Objection.

THE COURT: Overruled.

MS. BROBST: -- and they find in his pocket a plastic glove which they take and keep as evidence and which will also be introduced to you.

Ladies and gentlemen, after the State

presents its case to you, and we will also be presenting a pre-sentence investigation which gives you some background on the defendant, and the defense presents its case in mitigation, we're confident that you will weigh the evidence and return with the verdict of guilty of -- I'm sorry -- return with a sentence of death.

Thank you very much.

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MS. NETHERCOTT: Your Honor, counsel for the State, Kevin, ladies and gentlemen of the jury, first of all, I also would like to thank you for your patience and ask for your indulgence with me if I sometimes refer to my notes. Generally try not to do that, but as you can imagine, it's a very serious

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proceeding and I don't want to miss anything that I would like to discuss with you at this point. This will probably be the only opportunity I have to speak directly with you. As you know, my name is Michelle Nethercott and I, along with Carl Schlaich, represent Kevin Wiggins in this proceeding.

I'd like to start discussing with you the decision that you must make in this case. You have heard from the State and you have been instructed by the judge that there is a guilty verdict in this case and, obviously, you are bound by that verdict. Just to clear up any confusion about that, that verdict stands. You as the jury have no power

to alter that verdict. Even if you heard all the
evidence in this case and you went back into the
jury room and you concluded that Kevin Wiggins
wasn't guilty of the murder, you have no power to do
anything about that. He has been found guilty of
first degree murder. That verdict is a fact and
it's a fact which means that Kevin Wiggins will be
punished harshly and immediately.
The decision that you ultimately must
render in this case is, does Kevin Wiggins die in a
gas chamber, does he spend the rest of his life in a

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prison with no possibility of ever being paroled, or
does he spend much of his life in prison with some
possibility, at some point in his life, to be
considered for parole.
Now, each of you is an individual and I'm
sure you can use independent thinking. You probably
know from this process that you've gone through on
voir dire that we're been inquiring into that. We
need your independence because this is a decision
that each of you individually must make. To make
this decision, that Kevin Wiggins should die, each
and every one of you must individually decide that.
I'm going to talk with you about the
evidence in this case, but before I do that, I would
like to talk with you a little bit about the law
because it's very important to understand what the
law is and how it applies here.
I'm sure all of you know the death penalty
is very controversial. People have strong feelings
about it, both for it and against it. And the law

has not escaped this controversy. There has been a
struggle in our law for many years in this country
about whether to have it, and if we have it, how,
and who does it apply to. The outcome of that
struggle in the law has been this. Our courts, from

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the Supreme Court to our Maryland courts, have
consistently said that there is nothing illegal
about having a death penalty, it's fine and it is
appropriate in certain circumstances. The law has
further said that those circumstances have to be
clearly defined.
What the law says is, first of all, the
law must only apply to a very small, select group of
offenders, the worse offenders, in fact the worst
murderers. Secondly, obviously the law must be
concerned with procedures that insure that only
those people, in fact, guilty of having committed
the crime are sentenced to death. And in Maryland,
you must specifically make a finding that the State
has proved beyond a reasonable doubt that Kevin
Wiggins caused the death of Florence Lacs. That's
something that is referred to as principal in the
first degree. You may hear reference to it. That's
what it means, ladies and gentlemen.
The other thing the law has become very
clear about is that you cannot have what's called a
mandatory death penalty. What that means, quite
simply, is that there is no crime bad enough in and
of itself as to require an automatic imposition of
the death penalty. Courts have been very clear

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about that. That is illegal.
Courts have required that, in making a
sentencing decision, you as sentencers consider not
only the facts of the crime, what a person is found
to have done, but also you must consider who that
person is.
The State must first prove, before you
even consider these things called mitigating
factors, and I'll get to that in a minute. But the
first thing the State must prove is that Kevin
Wiggins caused the death of Florence Lacs. The
evidence won't prove that.
You must consider, when you hear the term
"aggravating factor", that is that special
circumstance which the law allows provides for the
imposition of the death penalty. Aggravating factor
is a very cleaned up, legal term. What it means,
quite simply, is a reason to kill. Mitigating
factors are reasons not to kill Kevin Wiggins. They
are not excuses, ladies and gentlemen. I wouldn't
stand before you and offer you an excuse in this
matter. They are reasons not to kill.
The evidence that you will hear has been
summarized, I think quite well, by the prosecutor.
I ask you, as you hear this evidence, to consider

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certain things; to look out for certain things.
First of all, it's going to be very
important that you listen very closely to this
evidence because detail's important in this case.

You will hear some complicated medical testimony and
I ask you, bear with us all and try to keep track of
this as it comes in. Dates are going to be
important in this case.
You won't hear in this case from any
eyewitnesses who saw Kevin Wiggins kill Florence
Lacs. You won't hear from any eyewitnesses who will
say that they saw Kevin Wiggins enter her
apartment. You will hear some scientific evidence.
You will hear about fingerprints and you will hear
they were not Mr. Wiggins.
You will hear that he was in possession of
things that belonged to Ms. Lacs on a Thursday, the
15th of September, 1988, and you will further hear
evidence that Florence Lacs was alive the next day.
You will hear testimony from one of her
friends that she spoke to her on the telephone, and
you will hear detailed medical testimony that
doctors specializing in issues relating to
determining how the way and the time that death
occurred will conclude that the medical evidence

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also is clear, that she was alive that day.
After you have heard that evidence, I
believe you will agree that the State has not proved
what it must prove before you are even in a position
to go on and consider these mitigating circumstances
or reasons not to kill Kevin Wiggins.
You've heard from the prosecutor -- Kevin
Wiggins has no prior convictions for crimes of
violence, and that's indeed true. The judge will
instruct you that you must consider that as a reason

not to kill him.
You're going to hear that Kevin Wiggins
has had a difficult life. It has not been easy for
him. But he's worked. He's tried to be a
productive citizen, and he's reached the age of 27
with no convictions for prior crimes of violence and
no convictions, period. This is not a man who spent
his life in and out of prison doing one thing after
another. I think that's an important thing for you
to consider.
I thank you for your patience. I give you
my best wishes as you embark on this difficult and
profound task. I submit to you that when you have
heard the evidence in this case, that you will have
grave hesitation about a decision to execute based

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on this evidence. Thank you.

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BY MS. COFFIN: [WITNESS: MARY ELGERT]
Q Mrs. Elgert, did you know Florence Lacs?
A Yes, I do. Did.
Q How did you know her?
A I can't hear you very well.
Q Okay. I'm going to come over there with
you.
A I'm deaf in this ear.

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Q How did you know Florence Lacs?
A Oh, she belonged to our Senior Citizens

Club and that's how I came to know her. And she
became a very good friend of mine.
Q I'm going to direct your attention to
Thursday, September 15th, 1988. Do you recall doing
anything with Florence Lacs on that day?
A Well, she came and got me. She always
would come after me and take me down to the Senior
Citizens Club and then she would bring me home.
Q On Thursday?
A On Thursday is our meeting day.
Q The 15th of September?
A Well, every Thursday is our meeting
day.
Q On the 15th, did you and she attend?
A Oh, yeah. It was the 15th, yeah,
Q How long were you at the luncheon?
A From 11:30 until 1. Well, we didn't
leave there until 4. It was a meeting ended 4:00.
Q At 4:00, what did you do?
A She said, come on, let's get ready and
go. And I got ready, went out and got in the car.
Q Who is the she you're referring to?
A Well, she was a very happy-go-lucky

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person and we had a lot of fun together. She was
always thinking of something interesting and telling
you something interesting. She was a person that
was --
MR. SCHLAICH: Objection.
A -- friendly with most everybody --
THE COURT: Overruled.
A -- that I know of.

9 Q Mrs. Lacs drove you home?
10 A Oh, yes. Right to my driveway.
11 Q What time was that?
12 A What?
13 Q What time did she drop you off?
14 A Oh, I guess it was about 10 after 4.
15 Q Did she indicate to you if she was going
16 to do anything else that day?
17 A No. No. No. We just were laughing and
18 talking and she said goodbye, I'll see you soon, and
19 that was it.
20 Q Do you remember what she was wearing
21 that day?
22 A Well, she was wearing a white blouse and
23 a very pretty blue skirt, because I commented on how
24 well she looked. And it was a new skirt. And she
25 thanked me. And she had her hair done and

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1 everything. She looked very nice.
2 Q What color car did Mrs. Lacs have?
3 A Well, I'm not much about cars. But it
4 was a red car and a small one. But I don't know the
5 name of the car.
6 Q Did you ever see Mrs. Lacs again after
7 that day?
8 A No, I didn't.
9 Q Thank you very much, Mrs. Elgert. Now
10 just stay here a moment. These folks may have some
11 questions for you.
12 CROSS EXAMINATION
13 BY MR. SCHLAICH:
14 Q Mrs. Elgert, can you hear me? Can you

15 hear me?
16 A Now I can hear you.
17 Q Now you can hear me. Okay. Maybe I
18 should move closer. The State's Attorney asked you
19 if you ever saw Ms. Lacs again and you said no,
20 right?
21 A No. I didn't.
22 Q Okay. You weren't supposed to see her
23 until the next Thursday when she picked you up?
24 A That's right. Unless she wanted to go
25 somewhere and asked me if I wanted to go.

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1 Q Okay. So you weren't planning to see
2 her for a week, right?
3 A No. No.
4 Q Okay. Now, do you remember giving a
5 statement to the police about this whole incident?
6 A I don't remember giving it to the police
7 in particular. But I made several statements.
8 Q Okay. Now, do you remember telling the
9 people you gave these statements to that Ms. Lacs'
10 new skirt was a light blue skirt?
11 A Yes.
12 Q Yes? Okay. It's not a dark blue like
13 the dark blue in your dress?
14 A No, it was light like that (indicating).
15 Q Okay. You're pointing to the lightest
16 color stripe in your dress?
17 A The lightest color in there, a little
18 bit lighter.
19 Q But not dark like the dark blue stripes
20 on your dress, right?

21 A No, No.

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15 BY MS. BROBST: [WITNESS: CHIANTI THOMAS]
16 Q Can you tell the jury your name?
17 A Chianti Thomas.
18 Q And how old are you, Chianti?
19 A Twelve.
20 Q What's your birthday?
21 A March the 11th, 1977.
22 Q And could you please spell your last
23 name for us?
24 A T-H-O-M-A-S.
25 Q Now, Chianti, I want you to think back,

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1 I want you to think back to September 15th, 1988.
2 Do you remember going to visit a friend that day?
3 A Yes.
4 Q Okay. Where did you go?
5 A I forgot her building number. But her
6 name was Shanita.
7 Q Okay. Do you remember her apartment
8 number?
9 A E.
10 Q And did you go visit Shanita there at
11 Apartment E?
12 A Yes.
13 Q Were you with anybody else?
14 A Yes.
15 Q Who were you with?
16 A Chentell.

17 Q And do you know Chentell's full name?
18 A Chentell Antoinette Greenwood.
19 Q Now, did you go to leave that day at any
20 time?
21 A What do you mean?
22 Q Were you going to leave your friend's
23 apartment that day any time?
24 A Yes.
25 Q And can you tell us what happened when

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1 you went to leave?
2 A We had left and Shanita couldn't get her
3 door locked so she knocked on her next door
4 neighbor, Miss Florence's door, and Miss Florence
5 couldn't get it. And so then this man, the man came
6 upstairs and she said, I told you nobody wouldn't
7 mess with the sheet rock. And he said, thank you.
8 Then Shanita had asked him to do the
9 lock. I told her don't be getting nobody else to
10 lock her door. And then the phone had rung. And
11 Chentell and Shanita had went back in her house
12 because it was Chentell's mother. And then they
13 came back out and we locked the door. And then we
14 went out the building.
15 Q Okay. Now, do you remember making a
16 statement, writing out a statement for the police?
17 A Yes.
18 Q I'm going to show you this.
19 MR. SCHLAICH: Objection.
20 MS. NETHERCOTT: Objection.
21 THE COURT: Sustained at this point.
22 Q When you made the statement to the

23 police, did you tell the truth?
24 MR. SCHLAICH: Objection.
25 THE COURT: If you're using it to refresh

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1 her recollection, you have to find out first whether
2 she has a recollection before you can use it.
3 Q Do you remember today the apartment, the
4 apartment where your friend Shanita lived?
5 A Yes.
6 Q Okay. What was the number of the
7 apartment?
8 A Like E.
9 Q Okay. But how about the number? Do you
10 remember that?
11 A Uh-uh. I forgot.
12 Q Okay. And do you remember making the
13 statement to the police?
14 A Yes.
15 Q And do you recognize this?
16 A Yes.
17 Q And would you look at this and see if it
18 helps you to remember the apartment number? Could
19 you just look at it for me? See if it helps you
20 remember. Do you remember now?
21 A Yes.
22 Q And would you tell us what the apartment
23 number is?
24 A 1951.
25 Q Okay. Now, do you remember when the

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1 detective showed you some pictures?
2 A Yes.
3 Q Can you tell the jury about that?
4 A Detective Crabbs came to Chentell's
5 house and showed us some pictures. He showed
6 Chentell the pictures first and then he showed me.
7 Q Okay. And did Detective Crabbs tell you
8 which picture to pick?
9 A No.
10 Q Did you pick a picture?
11 A Yes.
12 Q And whose picture did you pick?
13 A (Indicating.)
14 MS. NETHERCOTT: Objection.
15 THE COURT: Overruled.
16 Q Indicating, for the record, the
17 defendant.
18 A I know the number.
19 Q Okay. Do you remember what number it
20 was?
21 A Picture two.
22 Q How were you able to pick that picture?
23 A Huh?
24 Q Had you seen the man in picture two
25 before?

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1 A Yes.
2 Q And where had you seen him before?
3 A In Shanita's building.

* * * *

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* * * *

19 CROSS EXAMINATION
20 BY MS. NETHERCOTT:
21 Q Chianti, the man that you saw in the
22 hallway --
23 THE COURT: Speak just a little bit louder
24 for the jury.
25 Q The man that you saw in the hallway,

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1 after he talked with Ms. Lacs, he went back in her
2 apartment, right?
3 A (Nods affirmatively.)
4 THE COURT: Chianti, answer so the jury
5 can hear you.
6 A Yes.
7 Q And he left, right?
8 A When I left, he was still in the
9 building.
10 Q But you saw him leave, right?
11 A (Nods negatively.)
12 Q Well, Chianti, do you remember
13 testifying at a prior proceeding?
14 A What's that?
15 Q At another trial about this case?
16 A Yes.
17 Q And do you remember testifying, then,
18 that the man left?
19 A Yes.
20 Q And also, when you testified before
21 about this case and you looked at Mr. Wiggins, you
22 couldn't say that he was that man, right?

23 A Yeah.
24 Q No further questions.
25 RE-DIRECT EXAMINATION

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1 BY MS. BROBST:
2 Q Why can you today, Chianti?
3 THE COURT: Can you answer, Chianti?
4 A Because that's him.

* * * *

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4 BY MS. COFFIN: [WITNESS: EDYTHE VASSAR]
5 Q Mrs. Vassar, did you know Florence Lacs?
6 A Yes, I did.
7 Q Do you know where she had lived?
8 A Yes. She lived in an apartment at, on
9 Woodlawn Drive.
10 Q Do you know what the number of her
11 apartment was?
12 A No. I really don't.
13 Q Did you know Mrs. Lacs to drive a car?
14 A Yes, she did.
15 Q I'm going to show you three photographs,
16 which I'll ask be marked as State's 1-E, D and A,
17 beginning with what is marked 1-E. Can you
18 recognize that?
19 A Yes. That is her car.
20 THE COURT: Ask you to speak a little bit
21 louder, please.
22 A That is her car.
23 Q And what has been marked as 1-D?
24 A That's also her car.

25 Q And what has been marked as 1-A?

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1 A Her car keys.
2 Q And how is it that you know that to be
3 her car?
4 A That's the license number.
5 Q You knew her tag?
6 A Um-hum.
7 Q I would ask that these be moved into
8 evidence.
9 MS. NETHERCOTT: No objection.
10 THE COURT: State's 1.
11 THE CLERK: A, D and E.
12 (State's Exhibit Nos. 1-A, 1-D and 1-E,
13 photographs, were entered in evidence.)
14 BY MS. COFFIN:
15 Q Do you know if Florence Lacs had a set
16 of keys for her car and a separate set of keys for
17 her apartment?
18 A It was all on one key ring.
19 Q Did you know her to ever leave her car
20 keys in the car?
21 A No, she had to have them to get in her
22 apartment.
23 Q Do you know if Mrs. Lacs had any credit
24 cards?
25 A Yes, she did.

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1 Q What credit cards do you know that she
2 had?

3 A The ones that I know are Penney's, Sears
4 and Hecht's.
5 Q Do you know where she kept those credit
6 cards?
7 A When I was with her, she got it out, one
8 out of her wallet when she used it.
9 Q I'm going to direct your attention to
10 Thursday, September 15th, 1988. Do you recall what
11 you were doing on that day?
12 A I don't remember the date, but what day
13 was it?
14 Q It was a Thursday.
15 A Thursday. We went to the club, Senior
16 Citizens Club.
17 Q On the 15th of September, do you recall
18 going to the Senior Citizens Club?
19 A If it was a Thursday, I went.
20 Q Do you remember being with Florence Lacs
21 on Thursday?
22 A I saw her but I didn't talk with her. I
23 spoke to her but she didn't hear me, didn't answer.
24 Q Did there come a time when you spoke
25 with her again?

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1 A I spoke with her on Friday morning,
2 between 10 and 10:15.
3 Q How did you speak with her?
4 A Over the telephone.
5 Q Did you call her?
6 A No, she called me.
7 Q And what was the nature of the
8 conversation?

9 A Well, she asked me what I was doing.
10 And I was getting ready to get a bath to go to a
11 luncheon down at Saint Luke's church. And she told
12 me she had to go back to the store. And I called
13 her stuck up because when I spoke to her when she
14 came back from getting a second cup of coffee, she
15 didn't answer, and she said she didn't hear me.
16 Q You say you were going to a luncheon on
17 Friday?
18 A That's right.
19 Q Where was this luncheon to be held?
20 A Saint Luke's church in Woodlawn.
21 Q Did you attend this luncheon every
22 Friday?
23 A Yes, we did at that time.
24 Q Who's we?
25 A Martha Leighty.

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1 Q Did Mrs. Leighty always attend the
2 luncheon with you?
3 A Yes, I picked her up and took her.
4 Q You always picked her up?
5 A Um-hum.
6 Q Did Mrs. Lacs ever attend this luncheon
7 with you?
8 A No.
9 Q Was she aware that you attended the
10 Saint Luke's luncheon every Friday?
11 A Yes, she was.
12 Q Had you asked her ever to attend with
13 you?
14 A No, I didn't.

15 Q What would you say was the length of
16 this conversation?
17 A It wasn't more than five minutes.
18 Q Was there anything unusual about the
19 conversation?
20 A No.
21 Q Thank you, Mrs. Vassar. That's all the
22 questions I have.
23 CROSS EXAMINATION
24 BY MS. NETHERCOTT:
25 Q Good morning, Mrs. Vassar.

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1 A Good morning.
2 Q Mrs. Vassar, you had known Ms. Lacs for
3 about 10 years, right?
4 A Right.
5 Q You talked to her on the telephone
6 before, right?
7 A Many times.
8 Q So you recognized her voice, right?
9 A Um-hum, right.
10 Q Okay. And you've been questioned about
11 this phone call many times, haven't you?
12 A Yes, I have.
13 Q In fact, you were questioned about it
14 one day after the phone call, correct?
15 A Yes. After they found her body.
16 Q And you also received a phone call at
17 some point from someone telling you you must be
18 wrong about it, right?
19 A Yes, I did.
20 Q But you're sure you're right?

21 A I'm sure I'm right,
22 MS. NETHERCOTT: No further questions.
23 THE COURT: Anything else?
24 RE-DIRECT EXAMINATION
25 BY MS. COFFIN:

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1 Q There was nothing unusual about this
2 phone conversation?
3 A No.

* * * *

16 BY MS. COFFIN: [WITNESS: ELIZABETH LAINE]
17 Q Mrs. Laine, did you know Florence Lacs?
18 A Yes, I did.
19 Q How do you know her?
20 A Well, she belonged to our Senior
21 Citizens Club.
22 Q Did you attend this Senior Citizens Club
23 on Thursdays?
24 A I did.
25 Q And Mrs. Lacs attended on Thursdays?

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1 A Yes.
2 Q Did you know where Mrs. Lacs lived?
3 A Yes. She lived in an apartment on
4 Woodlawn Drive.
5 Q On September 15th, 1988, did you see
6 Mrs. Lacs at the Senior Citizens luncheon?
7 A Yes, I did.
8 Q I'm going to direct your attention now
9 to the 16th of September. Did there come a time

10 when you noted anything unusual on the 16th?
11 A Well, that was Friday and I, I went to
12 the library at around 4 and automatically, I always
13 looked toward the parking lot and I, her car was not
14 there.
15 Q Whose car?
16 A Florence's.
17 Q What kind of car was that?
18 A She had a little red Chevrolet.
19 Q Did you note anything about the car
20 being gone at that time?
21 A Well, I just noticed that it was not
22 there.
23 Q How much time would you say you spent
24 with Mrs. Lacs on the 15th at the Senior Citizens
25 luncheon?

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1 A Well, we had our, we had our lunch. We
2 ate our lunch. And then we had a meeting after
3 that, and that was it.
4 Q So a couple of hours?
5 A I would say something like that.
6 Q Do you remember what Mrs. Lacs was
7 wearing on the 15th?
8 A Well, not the colors. But she usually
9 wore a blouse and skirt. I wouldn't, I don't know
10 the colors that day.
11 Q I'm going to direct your attention now
12 to the 17th of September, which was Saturday.
13 A A Saturday. Um-hum.
14 Q Had you planned any functions for that
15 Saturday?

16 A Well, there's six of us that used to
17 play pinochle and we took turns having each other at
18 our homes. And they would bring a sandwich and then
19 the hostess would furnish the dessert and coffee and
20 then we would play cards.
21 Q Who was to be the hostess on the 17th?
22 A I was.
23 Q And was Mrs. Lacs invited to attend
24 that?
25 A Oh, yes. She always.

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1 Q What time was it planned that everyone
2 would arrive at your home?
3 A Well, they usually arrived a little
4 before12 or around that time.
5 Q Did Mrs. Lacs arrive at twelve?
6 A No, she did not.
7 Q Did there come a time when she arrived?
8 A She didn't come.
9 Q Can you tell the ladies and gentlemen of
10 the jury what you did when Mrs. Lacs did not appear
11 at your home?
12 A Well, usually, she loved to play cards
13 and she was alone so she would come a little ahead
14 of time. Sometimes she would drive her own car and
15 sometimes one of the other ladies would bring her.
16 And she did not come and we, the rest of us ate our
17 sandwich and we waited, and she never came.
18 Before that, one of the other ladies that
19 drove went back and rapped on her apartment door and
20 there was no answer. And so then we ate our lunch
21 and we started to play cards, but she never came.

22 So I was kind of concerned because when
23 you live alone, you can fall. And I tried to get
24 her by phone several times and she didn't answer.
25 So when she didn't come, I just, I thought that's

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1 odd. So I said, I think I'll call the police.
2 Q And did you call the police?
3 A And I did call the police. And he came
4 and took the information.
5 Q Was this a uniformed officer who
6 arrived?
7 A Yes.
8 Q Do you remember discussing with him
9 Florence and her absence?
10 A I beg your pardon?
11 Q Did you tell the officer your concerns
12 about her not being there?
13 A I did.
14 Q Do you remember the officer ever asking
15 you about what you had last seen Florence Lacs
16 wearing?
17 A I just can't remember that. But he may
18 have. I don't remember.
19 Q Do you remember ever having seen
20 Florence Lacs in a red dress?
21 A No.
22 Q Thank you, Mrs. Laine. That's all the
23 questions I have. These folks might have a couple
24 questions for you.
25 CROSS EXAMINATION

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BY Ms. NETHERCOTT:
Q Ms. Laine, you testified that you were
the person who called the police on Saturday, right?
A Right.
Q And you spoke with a uniformed officer?
A Right.
Q Do you remember what he looked like?
A Well, he was young. He was youngish
and, I could, I couldn't tell you.
Q Young man?
A Yeah, youngish man.
Q And did you --
THE COURT: Excuse me. Ms. Laine, when
you answer, answer towards the jury.
A He was a youngish man.
Q He was a white man, right?
A Oh, yes.
Q And he took down the information, right?
A Right.
Q He wrote down what you told him?
A Right.
Q I'm going to show you something here
that's marked Defendant's Exhibit One. I'm going to
ask you if you can tell me if that's your signature?
A Yes.

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Q Okay. So you signed that?
A Yes.
Q Right?
A Yes.

Q And it says there that, last seen
wearing red dress, right?
A Oh, I didn't, I didn't, I didn't see
her.
THE COURT: Ma'am, you just can't carry a
conversation --
A I didn't see her when she wore the red
dress.

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BY MS. BROBST: [WITNESS: FLORENCE STAUFFER]
Q Mrs. Stauffer, were you related to
Florence Lacs?
A Yes.
Q And what was that relationship?
A I was her niece.
Q When did you last see Mrs. Lacs?
A About two weeks before.
Q Were you familiar with any of her
personal effects?
A Yes.
Q Now, I'm going to show you the contents
of an envelope which has been marked as State's
Exhibit Number 37, and I would ask you to look at
the contents of this envelope and tell me whether
you can identify it.
A That's her ring,
Q And by her, to whom are you referring?

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A Florence Lacs.
Q Now, does this ring appear to you to be

in substantially the same condition as it was when you last saw it?
A Yes.
Q And if you know, where did Mrs. Lacs customarily keep this ring?
A In her jewelry box in her bedroom.
Q I would move to introduce State's Exhibit Number 37 into evidence at this time.
THE COURT: Any objection?
MS. NETHERCOTT: No objection.
(State's Exhibit No. 37, ring, was entered in evidence.)

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BY MS. BROBST: [WITNESS: GERALDINE ARMSTRONG]
Q Miss Armstrong, could you please give us your address?
A 4103 Paran Road, Randallstown.
Q And with whom do you live at that address?
A I beg your pardon?
Q With whom do you live at that address?
A My sister and my mother.
Q Do you know the defendant, Kevin Wiggins?
A Yes, I do.
Q And back in 1988, September of 1988, did you know him at that time?
A Yes, I did.
Q Can you describe your relationship with him in September of 1988?
A It was a normal relationship between a man and woman.

Q Would you characterize it as boyfriend/girlfriend?
A Yes. Uh-huh.
Q And have you proceeded to keep in touch with the defendant since September of 1988?
A Yes. I have.

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Q Do you have any children together?
A Yes, we do.
Q And how old is that child?
A She's 19 months.
Q Now, on September 15th, 1988, specifically, were you living at the Paren Road address?
A Yes.
Q Where was the defendant living?
A At the time, he was living in his car.
Q And prior to that, to your knowledge, had he lived at the Clark Manor Apartments?
A I beg your pardon? I didn't hear you.
Q Before he was living in his car, if you know, did he live at the Clark Manor Apartments?
A Yes, uh-huh.
Q And how do you know that?
A My brother. He was living with my brother.
Q Okay. And at what time, during what dates was he living with your brother in the Clark Manor Apartments?
A It was so much going on then, I really don't know the dates. It was during the summer, because at that time my sister had passed. So

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really the dates, I really couldn't tell you, or
what month. It had to be between June and July,
around there.
Q Of 1988?
A Yes.
Q Okay. Thank you, now, I want to direct
your attention specifically to Thursday evening,
September 15th, 1988. Were you working at that
time?
A Yes.
Q And where were you working?
A At Social Security.
Q Are you still employed there?
A Yes, I am.
Q And did you work on that Thursday?
A Yes, I did.
Q Do you recall what time you got home
from work?
A It was between, between seven, 7:15.
Q And what did you do when you returned
home to Paran Road?
A I was beginning to cook. Beginning to
make dinner.
Q And what happened that night?
A Well, shortly after that, Kevin came in

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and --
Q And by Kevin, to whom are you referring?
A Kevin Wiggins.
Q Is he in court today?

A Yes, he is.
Q Could you indicate where for us, please?
A Sitting right there (indicating).
Q Indicating, for the record, the
defendant seated with counsel at trial table.
Do you recall what time he came over?
A It was between 7:30 and quarter to
eight, I believe it was.
Q And what happened?
A He had asked me if I wanted to go
shopping and I told him yes. And at that time I
asked my brother could he finish cooking for me and
he said he would.
Q Okay. And how did the defendant get to
your house?
A He drove, as far as -- yeah, as far as I
know, he drove. He had a car.
Q Okay. What kind of car did he have that
night?
A It was a Chevette.
Q Can you describe it?

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A It was a reddish-orange Chevette.
Q Had you ever soon that car before,
before this evening?
A No, I haven't.
Q You had not?
A No, I had not.
Q And did you ask him about that?
A Yes, I did.
Q What did he say?
A He said it was a friend of his.

11 Q Did you accept that?
12 A Yes. At the time, uh-huh.
13 Q And what happened when he was at your
14 house, the defendant?
15 A Well, as usual, he likes to, to clean
16 up. And he asked me could he just wash his face and
17 I said yes. But my sister did not want him using
18 the facilities there. We had an argument about it.
19 Q Now, did there come a time when you left
20 the Paran Road address? Did you leave that night?
21 A Yes, I did.
22 Q And how did you leave? What was your
23 mode of transportation?
24 A The little orange car.
25 Q The little orange car?

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1 A Um-hum.
2 Q And who left?
3 A Me and Kevin.
4 Q Where were you going?
5 A We had gone to Security Mall.
6 Q What time was that?
7 A At that time, that was about, between 8
8 and 8:15.
9 Q And why did you go to Security Mall?
10 A Well, they had different clothing stores
11 there, so that would be the first place I would go,
12 that I've always shopped at, anyway.
13 Q So you went to go shopping?
14 A Yeah.
15 Q And tell us what happened.
16 A Well, we had gone shopping and we went

17 to the Hecht Company and we got a couple things
18 there.
19 Q Well, tell us about that. How did you
20 pay for these things?
21 A A credit card.
22 Q And whose credit card was it?
23 A The name on it? It was a Ms. Lays
24 (sic), Florence Lays.
25 Q And who had this credit card?

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1 A Kevin had it.
2 Q Kevin had it?
3 A Um-hum.
4 Q And did you ask him where he got it?
5 A Yes, I did.
6 Q What did he say?
7 A He said it was his, one of his aunt's,
8 had loaned him some cards that he could go shopping.
9 Q And what did you buy at Hecht Company
10 that night; do you recall?
11 A It was a watch, I believe, for my son,
12 and I think I got something for myself that night.
13 Q Jewelry?
14 A No. I got a suit for myself. I think
15 Kevin got maybe jewelry for himself. A necklace, I
16 think.
17 Q Now, how did you pay with Florence Lacs'
18 credit card?
19 A I beg your pardon?
20 Q How did you pay with her credit card?
21 A Charged it.
22 Q But who signed the credit receipts?

23 A I did.
24 Q And what name did you use when you
25 signed the receipts?

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1 A The same name that was on the credit
2 card.
3 Q Did this not concern you?
4 A Well, he had said that it was one of his
5 aunts and she didn't mind, and my sister let me use
6 hers so I didn't think nothing of it.
7 Q So you accepted his explanation?
8 A Yes, I did.
9 Q And did you sign all the receipts that
10 evening?
11 A Yes, I did.
12 Q Why?
13 A He had asked me to.
14 Q Now, do you recall what time you left
15 Security Square Mall that night?
16 A Well, the stores had closed. So it had
17 to be 9:30.
18 Q And where did you go?
19 A Well, we stopped to eat and I went
20 home.
21 Q And how did you travel from Security
22 Mall to your home?
23 A In the same car.
24 Q Do you recall what time you arrived
25 home

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1 A It might have been between 10, 10:30. I
2 I don't think it was too much later. It was, it
3 couldn't have been no later than 11:00.
4 Q Now, on September 15th, 1988, was the
5 defendant working? Was he employed?
6 A Was he employed, what time did you say?
7 What date?
8 Q On that date, on that Thursday,
9 September 15th?
10 A As far as I know.
11 Q Well, did you know him to be working?
12 A Yes.
13 Q And where was he working?
14 A At the apartments. At the -- I don't
15 really recall the name of it.
16 Q Okay. And do you know what kind of work
17 he was doing there?
18 A He was painting.
19 Q Now, after you got home on the evening
20 of September 15th, 1988, what did you do?
21 A On the evening of September 15th?
22 Q Yeah. After you got home from Security,
23 from Hecht's at Security?
24 A This is on a Thursday?
25 Q Yes, ma'am.

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1 A We sat and we looked at TV for a little
2 while and he left and I went to bed.
3 Q And did you make arrangements or plans
4 for the next day, Friday?

5 A Well, he was to pick me up to go to
6 work.
7 Q And did he do so?
8 A Yes, he did.
9 Q At what time?
10 A It was around 7:30, I think. 7:30 to
11 something of 8, because I was running late.
12 Q And do you mean a.m. or p.m.?
13 A A.m.
14 Q And what was he driving when he picked
15 you up?
16 A The same car.
17 Q Now, did you have a conversation on your
18 way to work?
19 A Yes, we did.
20 Q And what was that conversation?
21 A At that time, I was telling him I might
22 take off a little early because I didn't, I wasn't
23 feeling good, I had a cold. And he mentioned if I
24 needed him, to give him a call. And then he
25 stopped, he dropped me off to work, and I went

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1 inside and I told my boss I was. going to take off
2 early because I didn't feel good.
3 Then I called him maybe about a half an
4 hour or an hour later, after I started work. And
5 then I got a phone call stating that his clothes
6 were supposed to have been put out, and I was trying
7 to get in contact with him for that. And I couldn't
8 get in contact with him because I tried about two or
9 three times to call.
10 I was getting ready to leave and on my, I

11 didn't still didn't speak to him but my boss had
12 told me if I would wait, Kevin said he would come
13 and pick me up.
14 Q And did he pick you up?
15 A Yes, he did.
16 Q Is this at Social Security?
17 A Yes.
18 Q And what was he driving when he picked
19 you up?
20 A The same car.
21 Q And what time was it?
22 A It was about 12:30, something to one.
23 Q On Friday?
24 A Yes.
25 Q And what did you do? Where did you go?

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1 A Well, I went home. I was expecting my
2 check. And I wanted to see how my mother was
3 doing. And my check didn't arrive at that time. So
4 I left. We left and we went shopping. He asked me
5 did I want to finish picking up something for the
6 baby and I said yeah.
7 Q So what shopping facility did you go to?
8 A Well, we went to Security Mall. We had,
9 he had picked up some things for himself and then we
10 had gone to Columbia.
11 Q Okay. Now, while you were at Security,
12 which stores did you shop in?
13 A It was Hecht Company and J.C. Penney's.
14 Q And in the Penney's store, did the
15 defendant purchase any jewelry?
16 A Yes. Uh-huh.

17 Q And do you recall specifically what
18 jewelry he purchased?
19 A It was some rings, some more things for
20 myself, and some things for the baby.
23 Q Now, at Hecht's and Penney's, who signed
22 either of the credit card receipts?
23 A I did. Excuse me.
24 Q And what name did you use?
25 A The name that was on the credit card.

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1 Q Do you recall how much property you had
2 charged by the time you left the Security Mall in a
3 dollar value?
4 A No, not really.
5 Q You don't recall?
6 A No.
7 Q Do you recall getting a ring for
8 yourself?
9 A Yes.
10 Q And did the saleslady ask you to fill
11 out anything at that time after the purchase of a
12 diamond ring? Do you recall that?
13 A Yes, I do. Now I do.
14 Q Tell us about that. What happened?
15 A I didn't fill it out.
16 Q Okay. Who did?
17 A Kevin filled it out for me.
18 Q And do you recall what information it
19 called for?
20 A No. Because I didn't even really look
21 at it.
22 Q Do you recall the name of the saleslady?

23 A No, I don't.
24 Q Do you remember?
25 A I didn't ask her name.

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1 Q Other than the purchases that you all
2 were making on Mrs. Lacs' credit card, do you recall
3 her giving anything to the defendant?
4 A Giving, giving the defendant anything?
5 Q Um-hum.
6 A No.
7 Q Okay. Now, after you left Security, you
8 went where?
9 A We went to Columbia.
10 Q In the same car?
11 A Um-hum. Yes.
12 Q And why did you go to Columbia?
13 A They have a nice restaurant out there
14 that I wanted to go. That's one of the reasons why
15 I went out there.
16 Q Any other reason?
17 A No. Only to, while we was out there,
18 then I stopped at Sears while we was out there. But
19 no, no other reason.
20 Q Okay. What did you do at Sears?
21 A Got some things for the baby.
22 Q And what did you use to get some things
23 for the baby?
24 A The same credit card.
25 Q And who signed those receipts?

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A I did.
Q And what name did you use?
A Lays, Florence Lays.
Q And did you question the defendant any
further about those credit cards?
A Yes. But he said as long as he made the
payments on them, that they would be all right.
Q Did that raise any suspicions on your
part?
A No. Like I said before, I have used my
sister's and I have used more than one, and I've had
possession of her credit cards that I could use to
my advantage as long as I paid for them.
Q Had you met an aunt of the defendant?
A No. I haven't met all his family,
anyway.
Q Now, did there come a time on Friday,
the 16th of September, 1988, when you left Columbia,
the Columbia Mall?
A Um-hum.
Q Sears store? Did that happen? Did you
leave?
A Yeah.
Q And where did you go?
A We went home.

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Q Anything unusual happen that evening?
A No.
Q Now, I'd like to direct your attention
to Saturday, September 17th, 1988. Do you recall

going Downtown into Baltimore on that date?
A Yes.
Q Why don't you tell us about that,
please?
A He had a ring.
Q Who is he?
A Kevin Wiggins had a ring that he said
that he had gotten or found and had wanted me to
pawn for him.
Q And he said he got or found a ring that
he wanted you to pawn?
A Yeah.
Q Can you describe that ring?
A It was an old diamond ring.
Q Did you ask him about how he acquired
it?
A He said he found it. No, I didn't.
Q And what did you do?
A I went to, well, I didn't know what pawn
shop it was, but I went to the pawn shop and I
pawned it.

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Q And whose name did you use when you
pawned the ring?
A Mine.
Q Were you asked to show any
identification?
A Yes.
Q Did you do so?
A Yes.
Q And do you recall where Downtown this
pawn shop was?

A It was down near the Civic Center. I'm
not that familiar with Downtown because I don't go
Downtown. I know it's right near the Civic Center.
Q And after you pawned the ring, do you
recall how much you got for the ring?
A It was between 30, 35.
Q Dollars?
A Uh-huh.
Q And then what did you do after you
pawned the ring?
A We went to his aunt's house.
Q Now, I'd like to direct your attention
forward in time, to September 21st, 1988. That was
a Wednesday, at about 10:00 at night. Were you with
the defendant at that time?

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A Yes.
Q And can you describe what happened at
that date and time, where you were and what
happened?
A Yeah. Well, we were driving in a car.
I just had gone to the store to get the baby some
milk and we were driving and on Windsor Mill Road on
our way back home, and it was going right past the
police station. And it was just so such commotion,
so many police, and I was scared to death.
Q Okay. Were you stopped by the police?
A Yes. Um-hum.
Q And was the defendant with you?
A Yes, he was.
Q Was that the same car, the car that you
were in that night, was that the same car that he

had picked you up in on Thursday, September 15th?
A Yes, um-hum.
Q Now, you stated earlier in your
testimony that the defendant, on September 15th,
1988 had been living in a car. What car was that?
A He has a car and something had happened
to it. It needed -- it was in the shop.
Q It was in the shop that day?
A Um-hum.

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MS. BROBST: I have no further questions,
Miss Armstrong. Thank you very much. The defense
will have some questions.
MR. SCHLAICH: Court's indulgence for a
moment.
(Pause.)
CROSS EXAMINATION
BY MR. SCHLAICH:
Q Miss Armstrong you remember testifying
here previously, correct?
A Yes.
Q And specifically, with respect to when
Kevin lived at the apartment with your brother, do
you remember testifying previously that he lived
there in the fall of 1987?
A It might have been.
Q Okay. Today you testified the summer of
1988?
A Well, see, that's when I met him. See,
I don't know how long he's been there. But that's
when I first saw him there. Now, he might have
been.

23 Q I see. So the last time he lived there
24 was?
25 A I don't recall me saying the fall but if

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1 I did, it could have been.
2 Q Okay. So the last time that he lived
3 there was the summer of 1988, is that what you're
4 saying?
5 A Yes, uh-huh.
6 Q And then he didn't move from there out
7 into his car, right?
8 A No.
9 Q He had a place to live?
10 A Oh, yeah.
11 Q And he had a car that he was keeping the
12 payments on?
13 A Right.
14 Q And when you met Kevin in the summer of
15 1988, he had a job?
16 A Yes.
17 Q What was he doing then?
18 A He was working at Mr. Good Buys.
19 Q And in the time that you knew him, did
20 he have any other job?
21 A Yes. He was working several places.
22 Q Do you recall any of them?
23 A It was a restaurant, a couple of them
24 were. They sell crabs and -- I can't think of the
25 name at the moment. I think about Red Lobster, but

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1 I know it wasn't Red Lobster.
2 Q In fact, at least at one point in time,
3 he worked two jobs at one time, correct?
4 A Yeah. Um-hum.
5 Q And to your knowledge, did Kevin ever
6 finish high school?
7 A To my knowledge.
8 Q To your knowledge, did he or didn't?
9 A He did.
10 Q No other questions, Your Honor.
11 MS. BROBST: No re-direct, Your Honor.
12 THE COURT: Thank you, ma'am. You can
13 step down.
14 MS. COFFIN: Your Honor, at this point, if
15 we might do one of the stipulations. I've made
16 copies of the stipulations for the jury to read
17 along with me.
18 MR. SCHLAICH: That's fine.
19 THE COURT: Is that okay? Okay.
20 MS. COFFIN: In addition, I would ask that
21 this stipulation which has been previously marked
22 for identification as State's Exhibit Number 3 for
23 sentencing, and the accompanying exhibits which have
24 also previously been marked for identification,
25 their number being 4 through 26, be moved into

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1 evidence.
2 (State's Exhibit Nos. 3, and 4 through 26,
3 stipulation and exhibits, were entered in evidence.)
4 MS. COFFIN: Ladies and gentlemen, it has

been hereby stipulated and agreed between and by the State of Maryland and Kevin Wiggins, the defendant on trial, in Criminal Case 88-CR-5464, that the following are true and accurate facts.

THE COURT: Excuse me. We need one more copy. Just one more? Two more.

MS. BROBST: I have an additional copy, Your Honor.

THE COURT: You can use mine. You need two more up there.

MS. COFFIN: That the following are the true and accurate facts: 1. That the defendant was in possession of Florence Lacs' Hecht's credit card, Account Number 515436664 on September 15th and 16th, 1988, without Florence Lacs' permission.

2. That on September 15th, 1988, it was a Thursday, the defendant, along with Geraldine Armstrong, purchased the following items from the Hecht's Company Department Store located at Security Square Mall. Payment for these items was made using Florence Lacs' Hecht's credit card without her

permission: At 8:57 p.m., from the Fine Jewelry Department -- one herringbone chain, valued $328.13; Exhibit Number 4 will be the sales receipt which you will receive at a later time.

At 9:14 p.m., from the Ladies Sportswear Department -- three articles of clothing with a value of $153.28; Exhibit Five being the receipt of that transaction.

At 9:19 p.m., from the Fashion Watches Department -- one Swatch watch valued at $36.75;

Exhibit Six being the seat in that case.

3. That on September 16th, 1988, Friday, the defendant, along with Geraldine Armstrong, purchased the following items from the Hecht's Company Department Store located at Security Square Mall. Payment for these items was made by using Florence Lacs' Hecht's credit card without her permission: A, at 3:51 p.m. from the Men's Department -- two articles of clothing, value $74.93; Exhibit Seven is the sales receipt for that transaction.

4. There was a purchase of Naturalizer shoes valued at $40.95 on August 21st, 1988 at the Hecht's Company Department Store. This purchase was made by Florence Lacs. Payment on the Hecht's

charge account was made on September 29th, 1988. This payment was made on behalf of Florence Lacs by her nephew-in-law, Charles Stauffer, Exhibits Eight and Nine will reflect that.

5. That there has been no other activity on Florence Lacs' Hecht's credit card between the date of August 21st, 1988 and September 15th, 1988.

6. That the defendant was in possession of Florence Lacs' J.C. Penney's credit card, Account Number 0146339734 on September 15th and 16th, 1988 without Florence Lacs' permission.

7. That on September 16th, 1988, Friday the defendant, along with Geraldine Armstrong, purchased the following items along from J.C. Penney's located at Security Square Mall. Payment for these items was made by using Florence Lacs'

17 J.C. Penney's credit card without her permission:
18 A, from the Fine Jewelry Department -- one
19 ring, 14 karat gold with a dark blue sapphire stone,
20 surrounded on one side with diamond chips, that had
21 a valued of $468.59. Exhibit 10 will be the sales
22 receipt.
23 I, this ring was recovered from the
24 defendant's person when he was arrested on September
25 21st 1988, so that number 11 is that ring.

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1 B, from the Fine Jewelry Department -- one
2 ring,14 karat gold, with a gray-white cat's eye
3 stone, valued $367.50. Exhibit 12 is the sales
4 receipt for that transaction.
5 I, this ring was also recovered from the
6 defendant's person when he was arrested on September
7 21st, 1988, Exhibit Number 13 is, in fact, that
8 ring.
9 C, from the Fine Jewelry Department, one
10 ring, lady's diamond chip cluster ring, valued at
11 $114.19. Exhibit 14 is the sales receipt of that
12 transaction.
13 D, from the Women's Department, three
14 articles of clothing valued at $130.20. Exhibit 15
15 is the sales receipt of that transaction.
16 E, from the Infant Department, infant
17 furniture and clothing valued at $64.83; Exhibit 16
18 is the sales receipt for that transaction.
19 Eight, that on September 16th, 1988,
20 Jeanetta Washington was the salesperson at the J.C.
21 Penney's Fine Jewelry Department. Ms. Washington
22 requested that the defendant complete a client

23 card. The defendant provided false information with
24 the name and address of Kevin Jackson of 4552 Finney
25 Avenue. The defendant also provided a false address

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1 of 1951 Walnut Avenue for the diamond certificate.
2 Exhibits 17 and 18 are the client card and the
3 diamond certificate.
4 Jeanetta Washington of J.C. Penney's --
5 excuse me. Jeanetta Washington's J.C. Penney's
6 business card was found in the defendant's wallet
7 when he was arrested on September 21st, 1988; that
8 business card is Exhibit Number 19.
9 10. That there was no other activity on
10 Florence Lacs' J.C. Penney credit card between
11 August, 1988 and September 16th, 1988.
12 11. That the defendant was in possession
13 of Florence Lacs' Sears credit card, Account Number
14 5485648590394, on September 16th, 1988 without
15 Florence Lacs' permission.
16 12. That on the 16th of September, 1988,
17 Friday, the defendant, along with Geraldine
18 Armstrong, purchased the following items from the
19 Sears Department Store located at the Columbia
20 Mall. Payment for these items was made by using
21 Florence Lacs' Sears credit card without her
22 permission.
23 A, casual shoes valued at $49.34; Exhibit
24 20 is the sales receipt for that transaction; B,
25 jeans with a value of $20.99, Exhibit 21 being the

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1 sales receipt of that transaction; C, three articles
2 of clothing valued at $53.52; Exhibit Number 22
3 being the sales receipt of that transaction; D, one
4 14 karat gold chain, seven inches, valued at $31.49;
5 Exhibit 23 being the sales receipt of that
6 transaction; E, 14 karat gold chain valued at
7 $83.99; Exhibit 24 being the sales receipt of that
8 transaction; F, two travel bags valued at $46.18;
9 Exhibit 25, the receipt of that transaction; G,
10 infant two piece set valued at $11.54; Exhibit 26
11 being the sales receipt of that transaction.
12 13. That there was no other activity on
13 Florence Lacs' Sears credit card between August,
14 1988 and September 16th, 1988.
15 14, that there was no activity on Florence
16 Lacs' Hecht's, J.C. Penney's or Sears card after
17 September 16th, 1988.
18 15. That Joan Murley, Document Examiner
19 for Baltimore County Police Department, examined all
20 of the signatures on all 16 sales receipts from
21 Hecht's, Penney's and Sears and stated, in her
22 expert conclusion, that Geraldine Armstrong prepared
23 the Florence G. Lacs signatures on all of those
24 sales receipts.
25 16. That Detective Tim Ostendarp,

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1 Fingerprint Examiner for Baltimore County Police
2 Department, conducted comparison examination of a
3 latent fingerprint found on the front of a Sears
4 sales receipt, that sales receipt had a total value

5 of $53.52, and found the characteristics to be
6 identical to the inked fingerprints of Geraldine
7 Armstrong.

* * * *

[WITNESS: DETECTIVE SERGEANT LEONARD BUTT]
25 BY MS. COFFIN:

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1 Q Sergeant Butt, how long have you been
2 with the Baltimore County Police Department?
3 A I've been with the department going on
4 15 years now.
5 Q You just stated to the ladies and
6 gentlemen of the jury that you're in the Baltimore
7 County Crime Lab?
8 A Yes, ma'am.
9 Q How long have you been in that?
10 A I've been in the Crime Lab for seven
11 years, in the Latent Print Unit for the past five
12 years.
13 Q Can you tell the ladies and gentlemen of
14 the jury what a Latent Print Unit is?
15 A The Latent Print Unit has the
16 responsibility of examining prints which are
17 recovered from crime scenes. When I'm referring to
18 latent print, I'm referring to a print that was left
19 on an object, then through some form of processing,
20 was recovered by somebody that has that
21 responsibility. And then the prints are returned to
22 our office where we actually conduct the
23 examinations to see if we can identify a particular
24 print from a particular individual.
25 Q Did you receive any special training to

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prepare you for conducting comparisons of fingerprints?
A I received some basic training when I entered the police department through our training academy. Received training through Essex Community College in various courses I've taken there in criminalistics. From the Federal Bureau of Investigation. Also from two certified latent print examiners who had been working for our department when I first entered into the latent print field. I've taken a number of courses, seminars. I travelled across the country to attend what seminars I can gain access into. Done a number of things on my own as far as reading professional manuals or textbooks whenever I can get my hands on them to stay in tune with the field. Yes.
Q Have you had occasion in the past to compare latent fingerprint samples to known inked fingerprint samples?
A Yes, ma'am, I have.
Q Approximately how many times have you done that comparison?
A Several thousand.
Q Have you had occasion to testify before

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in court, either in Baltimore County or any other county, as an expert in latent print fingerprint examination?
A Yes, ma'am, I have. This will be the

31st time I've testified in court on such matters.
Q Your Honor, at this time I would offer Sergeant Butt as an expert in latent fingerprint examination.
MR. SCHLAICH: No objection.
THE COURT: Accepted.
BY MS. COFFIN:
Q Sergeant, did you have occasion to respond to the location of 1951, Apartment C, Woodlawn Drive?
A Yes, ma'am, I did.
Q And in what capacity did you respond to that location?
A I was there as the supervisor of the mobile lab tech who was responsible for processing the scene.
Q And what were your responsibilities at that scene?
A To act as a coordinator, essentially, between the investigator from the Homicide Unit and also the investigator from our unit, the mobile lab

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tech, and also to advise on the processing of the scene to that technician as necessary.
Q What was the date you responded to that location and the time?
A I don't have the time, actually, that I responded. It was on the 17th of September of 1988.
Q Were there others there, also, responsible for processing the crime scene?
A Responsible for processing the crime

11 scene were two mobile lab techs from the Crime Lab,
12 Detective Roy Frederick and Detective Larry Ches.
13 Q And to your knowledge, they conducted
14 all of the processing of that crime scene?
15 A They conducted nearly all. There were a
16 couple things I took upon myself, but very minor.
17 Q Did you, yourself, take upon the lifting
18 of any prints that may have been found at that
19 location?
20 A I did not lift any prints, no, ma'am.
21 Q Do you know if fingerprints were, in
22 fact, lifted at that location?
23 A Yes, ma'am, there were prints lifted
24 that day.
25 Q Do you know how many prints were lifted

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1 and the location that those prints were lifted?
2 A Yes, ma'am. They were seven lift cards
3 that were prepared that day, recovered from the
4 crime scene, various locations. I'll have to read
5 off the cards themselves.
6 The bottom of the soap box that was found
7 on the dining room table. There were a couple
8 prints recovered from the interior side of the front
9 apartment door.
10 There were two prints that were recovered
11 from the exterior door frame going into the bathroom
12 area of the apartment. And there were also two
13 prints which were recovered from the kitchen
14 archway, the interior side of the kitchen.
15 Q Of those seven total prints that were
16 recovered, how many was the Crime Lab able to

17 identify?
18 A Identifications were made on two of the
19 prints.
20 Q And what were the locations of those two
21 prints that were identified?
22 A Those prints that were recovered from
23 both sides of the doorway going into the bathroom
24 from the hallway.
25 Q And whose prints did they belong to?

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1 A They were identified as belonging to
2 Officer B. Williams, and that identification was
3 made by Detective Sergeant Jimmy Simms.
4 Q That then leaving five unknown or
5 unidentified prints left at the scene?
6 A Yes, ma'am.
7 Q Could you explain to the ladies and
8 gentlemen of the jury the process that you use or
9 perform to complete a print identification or
10 analysis?
11 A When I'm referring to fingerprints, on
12 the base of your hand, the fingers, and the palms,
13 and also on the soles of your feet, for that matter,
14 there are a number of ridges. I'll refer to those
15 as friction ridges. These ridges, if you actually
16 just look at your hand, you can see them with no
17 problem. If you were to place your finger on to a
18 piece of glass when in was in a sweaty condition or
19 whatever, hold that glass up in front of a light,
20 you would actually be able to see these ridges,
21 these lines. The ridges themselves, if you really
22 pay attention to them, don't just enter into the

print area and circle around and go back out the
opposite side or come in one side and just go back
in the opposite side. What they'll tend to do is

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enter into the print area, and then at time, they'll
just stop. At that point where they stop, I refer
to that as characteristic, and that will be a ridge
ending.
The ridge may also just come into the
print area and then separate into two individual
ridges. At that point where it actually separates,
that's a characteristic that we also look for, and
it's called a bifurcation.
There are also times whether there may be
a point that lays between two rings. It has no
direction but is consistent in width as the width of
the ridges that it lays between. That particular
point is a third characteristic that we'll look for
in doing the comparisons, and we'll refer to that as
a dot.
What we're looking for, first of all, is
to see if we can find a cluster of these
characteristics that are found, first of all, in the
latent fingerprint, clearly identifiable, and then
also in an inked fingerprint which we may have
before us if we're asked to conduct an investigation
of one to the other.
If we can find a group of characteristics
that match not only to the type of characteristics

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but in the type they come into the print and the
relative position to each other, we then continue
from that small cluster of characteristics and look
through the print that were in relative position to
each other and also share the same position or
direction.
After we examine the print, we'll come to
a conclusion of, one, either they are the same
because all the characteristics that we found go in
the same direction or are in the same relative
position to each other, or two, that there may be no
identification made because of the clarity of the
print, meaning that the latent print that we're
looking at or the inked print that we have before us
is unclear in the particular area that we have to
look at for these characteristics, and we're unable
to decide if it is or is not actually an
identification; or three, that it is not, the latent
print is not identifiable with the inked
fingerprint, meaning that they were not made by the
same person.
And we'll draw a conclusion of one of
those three items and file a report on same.
Q Are you familiar with the term, print
elimination?

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A Yes, ma'am.
Q Can you explain to the ladies and
gentlemen of the jury what that means?
A Well, when we're looking at an inked

fingerprint, we may be looking at a criminal fingerprint for examination or we may be looking at a fingerprint that was provided to us, an inked fingerprint which would be a print taken from an actual person, we know where it originated from. That print may come from the victim of an incident. It may come from somebody who had legitimate access to the incident, such as Officer Williams in this particular case. His prints were identified in the case. He was examined for elimination purposes. We routinely examine police officers who routinely enter the crime scene without protection, to see if maybe their fingerprints are there. We have prints recovered but we've eliminated those prints as having been placed at the crime scene legitimately.
Q For the ladies and gentlemen of the jury, can you tell whose prints were eliminated in this case by the Crime Lab as compared to those five unidentified prints that were recovered from 1951-C?

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A For elimination purposes, we examined Mr. Joseph Thiele, Miss Florence Lacs, who was the victim. I would indicate that the prints recovered from her were very poor in quality. Mr. Robert Vaccaro, Mr. Paul Kiebel, Mr. Danny Platt, P. Henson and Lieutenant J. Carson. However, we had no palm prints available on Lieutenant Carson when we conducted our elimination exam.
Q And the Crime Lab also conducted elimination in reference to Officer Williams, is

that right?
A Officer Williams, yes, who was identified.
Q Any other police officers that were initially at the scene?
A Not that I have reported, no, ma'am.
Q You just indicated that Florence Lacs' prints were poor in quality?
A Yes, ma'am.
Q Do you know when those prints were obtained from Florence Lacs?
A Sometime after the incident occurred.
Q The five unidentified prints that you did recover from 1951-C, Apartment C, Woodlawn Drive, do you have a raring system or a value system

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that you place upon prints that you recover? That is, are some prints recovered better for identification purposes or not as good?
A Certainly. Often times, prints that are recovered from crime scenes are of no comparison value, meaning that the characteristics that we require to actually make the identification, there may not be a substantial number of those characteristics clearly visible in the print that we can use to conduct an examination.
A And of those five prints found in 1951, Apartment C, Woodlawn Drive, what would be your rating of those five prints?
A There was, in this particular case, five of the print cards that were of good quality for examination. There was one print that was of

marginal quality, meaning that the characteristics were there but they're not clearly defined and it's going to take a good bit of examination to actually make an identification off of that. And the possibility is that even if we have the correct ink card to match to that latent, we may still not be able to make the identification because of the quality of the latent.
One of the latents was of such poor

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quality that identification is not probable. It's of no identifiable value.
Q So of those prints, how many did you feel you had a good enough quality to make some sort of a valid comparison?
A Six, actually.
Q And how many were actually identified?
A Two.
Q So that left three unidentified prints That were of good quality for comparison purposes?
A That were of very good quality and one that was of marginal quality, yes.
Q were you ever able to identify Florence Lacs' fingerprints in the apartment?
A No, ma'am.
Q Is that unusual?
A Not necessarily. No.
Q Did you have occasion, while processing the scene on the 17th of September; to make any unusual observations as to markings at the crime scene?
MS. NETHERCOTT: Objection.

THE COURT: Overruled.
A At the crime scene, there was a particular area that the technicians that were

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responsible for processing the crime scene had started to process and they noted that there were some markings on a particular drawer that was located in the living room area of the apartment. On the face of that drawer, there were some markings which were consistent with water marks. Any time you wash your car, let's say, and you don't dry it properly, it sits out in the sun, you'll be able to actually observe water marks on the windshield area or on the body of the car. This particular surface revealed that type of marking. Just refer to it as water marks on the surface.
They stopped processing that particular area when they found those markings. That's the particular area that I went back and finished processing with later, yes.
Q And where exactly were those markings?
A They were on the front of a drawer that had been removed from whatever object, whatever table or console, whatever, and placed on the, actually on the sofa in the living room of the apartment.
Q Did you attempt to lift these markings for any comparison purpose?
A No, ma'am. They had no comparison

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value.
Q And why is that?
A Because they were simply water marks.
They showed no characteristics that would indicate
either fingerprint ridge detail or fabric
impressions. Would also be possible to collect
fabric impressions, if they were there. Or often
what we'll find in crime scenes will be a person
will use a Playtex type glove. Playtex gloves will
also have ridges formed, actually molded right into
the face of the glove, same as your fingerprints
would be. They're there for friction so that
somebody can actually grab something.
It's common to find somebody to use that
type of glove to leave actually the impression of
that type of detail on an object, ridge detail on an
object.
Q By ridge detail, you're referring to the
swirls?
A The actual ridges you would find, the
swirls, the lanes on the fingers, on the palms of
your hands.
Q Would there be any indication on those
marks if the hand was moving or would you be able to
determine that from those markings?

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A It may be possible to see that there was
a wiping motion and the water beaded actually at the
end of that wipe.
Q And of those prints that you observed in

1951, were you able to draw any of those conclusions
in reference to those marks?
A I honestly don't recall.
MS. COFFIN: Thank you very much.
THE COURT: Cross examine.
MR. SCHLAICH: One second.
CROSS EXAMINATION
BY MS. NETHERCOTT:
Q Sergeant Butt, you had occasion to
compare the prints that were recovered against Mr.
Wiggins' prints, correct?
A Yes, ma'am.
Q And that was done on the 21st of
September?
A I'm not quite certain of the date. I
don't have my reports. I know you have them there.
Q Okay. If I show you this?
A Sure.
Q Would it refresh your recollection?
A Certainly.
Q I need this marked as Defendant's Two.

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Thank you.
Sergeant Butt, I'll show you what's been
identified as Defendant's Exhibit Two. It's titled,
Baltimore County Police Department Request for
Latent Print Comparison?
A Yes, ma'am.
Q Is that your signature on the bottom?
A Yes, it is.
Q Okay. Can you just indicate for the
jury what the form says?

A What it indicates is that I was
requested by Detective McDonald, Lanny McDonald from
the Homicide Unit to examine Mr. Kevin Wiggins
prints, his inked fingerprints that we know came
from Mr. Wiggins, against the latent fingerprints
recovered in this particular incident. And the
results of my examination was that there was no
identification made. It was a negative exam, and it
was conducted September 21st, 1988.
Q Thank you very much, Sergeant.
(Pause.)
THE COURT: Miss Nethercott?
Q Yes, Your Honor. Sergeant Butt, you
indicated that you also had occasion with regard to
this crime scene to compare these prints that you

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recovered against the prints of other individuals,
correct?
A Yes, ma'am.
Q And you indicated, I believe, during
your direct testimony, several police officers?
A Yes, ma'am.
Q Correct? And it's a fact, you also had
occasion to compare those prints against the prints
of other individuals, correct?
A They were compared against a number of
individuals, yes.
Q They were not police officers, correct?
A Yes, ma'am.
Q In fact, you compared it against the
prints of a number of known burglary suspects,
correct?

A I don't know what their criminal
background may be.
Q But they were submitted to you?
A A number of names were submitted for
examination, yes.
Q Thank you. I have no other questions,
Your Honor.
THE COURT: Anything else?
RE-DIRECT EXAMINATION

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BY MS. COFFIN:
Q In addition to the police officers, were
you also submitted paramedics' names, to your
knowledge?
A I've got a number of names here but I
don't know what, really what they were for.
Q Of the three unidentified prints that
you had that you said were of comparison value, were
you able to determine that those prints were not the
prints of Florence Lacs?
A Mostly, I'd have to say no, simply
because of the quality that we recovered from her.
Q So that you cannot say that they were
her prints?
A It was an inconclusive examination.
Q So you can't say if they were her
prints?
A That's correct.
Q Thank you.
THE COURT: Anything else?
RE-CROSS EXAMINATION
BY MS. NETHERCOTT:

23 Q Just one brief question, Your Honor.
24 Officer, the prints that you did receive from Ms.
25 Lacs were of comparison value, correct?

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1 A They were of limited comparison value.
2 Q But they were of some comparison value?
3 A I could do some work with them, yes.
4 Q And you didn't find any match up on any
5 of the ridges and the other comparison points that
6 you examined?
7 A That's correct.

* * * *

[WITNESS: DETECTIVE LAWRENCE CHES]
20 BY MS. CO[illegible]IN:
21 Q Detective Ches, what is your position in
22 the Crime Lab Unit?
23 A Mobile Crime Lab technician.
24 Q And what does that mean? What would be
25 your responsibilities if you were in a Mobile Crime

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1 Lab?
2 A Respond to all serious crime scenes such
3 as homicides, shooting, stabbings. That type of
4 crime.
5 Q And whet would be your duties, if you
6 responded to those locations?
7 A To process the scene for prints, to
8 detect, collect and preserve evidence, photographs,
9 sketches.
10 Q I'm going to direct your attention to

11 September 17th, 1988. Did you have occasion to
12 respond to the location of 1951, Apartment C,
13 Woodlawn Drive?
14 A Yes, I did.
15 Q Were there other Crime Lab mobile
16 technicians with you at that time?
17 A Detective Frederick, Sergeant Butt.
18 Q And between the three of you, did you
19 process the entire scene?
20 A Yes, ma'am.
21 Q Detective, when you first entered
22 Apartment C, what did you notice of the condition of
23 that apartment?
24 A It was, as I recall, it was only one
25 light on in the bathroom. It was a little dark

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1 inside. There was some ransacking throughout the
2 apartment.
3 Q When you began the processing, did you
4 make efforts to determine if there was any forced
5 entry into the apartment?
6 A Didn't determine any forced entry.
7 Q But you looked for it?
8 A Yes, ma'am.
9 Q During the course of processing the
10 scene, did you have occasion to make any
11 observations as to household cleaning products?
12 A There were, in the bathroom, there was a
13 bottle of, I believe, Black Flag or a can of Black
14 Flag, container of Top Job, and Sunlight liquid.
15 There were other household items, I believe, for the
16 floor in the kitchen.

17 Q You then processed the kitchen as well,
18 is that correct?
19 A Yes, ma'am.
20 Q While in the kitchen, did you have
21 occasion to note anything unusual in reference to
22 the kitchen sink?
23 A There was a, the kitchen faucet was on.
24 It wasn't running real hard, but it was -- and it
25 wasn't dripping. It was just a light, steady

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1 stream, as I recall. And it was like, I believe, a
2 glass in the sink it was running into.
3 Q During the course of the processing, did
4 you have occasion to make any observations as to
5 wash cloths or towels in the apartment?
6 A I believe there were two wash cloths,
7 wet wash cloths on the dining room table and a damp
8 or wet towel on the bed, I believe.
9 Q Those two that you've said you found on
10 the dining room table, what was the condition they
11 were in when you found them?
12 A They were wet.
13 Q And the towel you said you found on the
14 bed, what was its condition?
15 A It was damp.
16 THE COURT: You say on the hamper in the
17 bedroom. Is that what you said? Or did you say on
18 the bed?
19 A On the bed.
20 BY MS. COFFIN:
21 Q Did there come a time when you removed
22 items from the body of Florence Lacs?

23 A Not me personally, no, ma'am.
24 Q Did the Crime Lab Unit remove any items
25 from Florence Lacs?

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1 A Items from the deceased?
2 Q Um-hum.
3 A Not that I recall.
4 Q I direct your attention to what you have
5 marked item 28-4.
6 A Oh, yes, ma'am.
7 Q Can you describe for the ladies and
8 gentlemen of the jury what this item was and where
9 you found it?
10 A There was a dark piece of thread around
11 the victim's upper, upper arm, left arm.
12 Q And did you, in addition, have occasion
13 to recover any similar item anywhere else in the
14 apartment? Directing your attention to item 28-18.
15 A There was a bag containing several
16 spools of dark-colored thread on the bed in the
17 bedroom.
18 Q Detective Ches, were you involved in
19 collecting the fingerprints that were located or
20 that may have been found in 1951, Apartment C?
21 A Yes, ma'am.
22 Q During the course of processing those
23 prints, did you have occasion to make any
24 observations of unusual markings?
25 A Yes. A few items there, one of the

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household containers, and on, I think, a drawer in the living room, there were what appeared to be one or two digits impressions on those items that appeared to be a wet fabric mark. It wasn't a fingerprint. It was sort of like water spots on a glass from a dishwasher.
Q Now, you said digits. You said you know digits. Can you just tell –
A Well, it appeared to be the shape of fingers.
Q A finger is what you're referring to as a digit mark?
A Yes, ma'am.
Q Saying you believed it to be a finger mark? Were these markings lifted for any comparison purposes?
A No.
Q And why weren't they lifted?
A They don't have any comparison value.
Q Had you, in the course of your experience as a Crime Lab technician, ever seen markings of that nature before?
A Yes, ma'am. Fabric marks. And like I said, these appeared to be wet. They had like little -- trying to think of the word -- water spot

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marks like you would get from a glass in a dishwasher.
Q Based upon your training and your knowledge and your experience as a Crime Lab

technician, did those markings indicate anything to you such that you could draw a conclusion about them?
MR. SCHLAICH: Objection.
THE COURT: Sustained.

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BY MR. SCHLAICH:
Q Detective, let me show you what has now been marked as Defense Exhibit Three, and the bag's been marked, but I'm worried about the contents. Could you tell me if you've seen that before?
A I believe that was a ball cap on the floor in front of the closet as you come in the front door of the apartment.
Q Okay.
THE COURT: Detective, when you speak, speak into the mike so the jury can hear what you're saying.
A Yes, Your Honor.
Q Would you repeat the answer in case they didn't hear?

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A Okay. It's a ball cap that I believe was on the floor of the apartment in the front of the, front of a closet off to the right as you come in the apartment.
Q In relationship to the front door of Ms. Lacs' apartment, this hat was found within three or four feet, is that correct?
A That's basically right.

9 Q Okay. And it was lying on the floor?
10 A As I recall.
11 Q Officer -- Detective, rather, did you
12 have occasion to look at the windows in the
13 apartment?
14 A Yes, sir.
15 Q And in fact, you found all of them
16 closed except for one that was open slightly, is
17 that correct?
18 A Yes, sir.
19 Q Okay. And that window that was opened
20 slightly, the screen was in place?
21 A The screen was intact, yes.
22 Q There's a sliding glass door in this
23 apartment?
24 A I believe so. Off the other --
25 THE COURT: Keep your voice up, Detective,

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1 so the jury can hear.
2 A I believe there was one off the living
3 room.
4 Q And that sliding glass door was closed,
5 also, correct?
6 A To my recollection it was.
7 Q You stated that there was one light on
8 in the bathroom that you recall. The fan in that
9 bathroom was off, correct?
10 A I don't really remember.
11 Q Okay. Court's indulgence. Your Honor,
12 at this time I would ask that Defense Exhibit Three
13 be allowed into evidence.
14 THE COURT: Defendant's three.

15 (Defendant's Exhibit No. Three, cap, was
16 entered in evidence.)

* * * *

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8 (Defendant's Exhibit No. Two, report, was
9 entered in evidence.)
10 MS. COFFIN: Your Honor, in light of the
11 time, I would ask that we get one more stipulation
12 in. This stipulation has been premarked as 35, and
13 I have copies to distribute to the Jury unless
14 there's an objection.
15 THE COURT: Go ahead.
16 MS. COFFIN: The following is the
17 stipulation. It is hereby stipulated and agreed by
18 the State of Maryland and Kevin Wiggins, the
19 defendant, on trial under Criminal Case 88-CR-5464,
20 that the following are true and accurate facts.
21 That a search and seizure warrant was
22 obtained on September 22nd, 1988 authorizing the
23 search of the home of Geraldine Armstrong, that
24 address 4103 Paran Road, Randallstown, Maryland,
25 21133. The warrant was executed on September 22nd,

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1 1988, and recovered from that address, 4103 Paran
2 Road, would be the following items.
3 1-A through E, one infant walker, one
4 infant snow suit, one ladies Cabin Creek sweater,
5 one ladies Cabin Creek corduroy pants, one ladies
6 Cabin Creek Jacket. These items were identified as
7 merchandise purchased from the J.C. Penney's,
8 obtained while using Florence Lacs' J.C. Penney's

9 credit card, Account Number 0146339734.
10 The following items: 2-A through E, one
11 infant 2-piece outfit, one infant dress, one ladies
12 gray jacket and pants, one ladies blouse, one
13 infant's suit.
14 These items were identified as merchandise
15 purchased from Sears, obtained while using Florence
16 Lacs' Sears credit card, Account Number
17 5485648590393.
18 And I would move this stipulation into
19 evidence.
20 (State's Exhibit No. 35, stipulation, was
21 entered in Evidence.)

* * * *

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[BY MS. BROBST:]
23 THE WITNESS: Detective William Michael
24 Crabbs, C-R-A-B-B-S. Currently assigned to the Sex
25 Crimes Unit, Baltimore County Police Department.

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1 DIRECT EXAMINATION
2 BY MS. BROBST:
3 Q Detective Crabbs, how long have you been
4 with the Baltimore County Police Department?
5 A Sixteen years.
6 Q And prior to Sex Crimes, what was your
7 assignment?
8 A Homicide.
9 Q Now, I'd like to direct your attention
10 back in time to December 17, 1988. On that date,
11 did you have occasion to respond to 1951 Woodlawn

12 Drive?
13 A Yes, I did.
14 Q Is that address in Baltimore County?
15 A Yes, it is.
16 Q Would you please tell us what you did
17 when you got there?
18 A Yes. I was advised by Communications at
19 4 p.m. to respond to 1951 Woodlawn Drive, Apartment
20 C. Arrived at the location approximately five
21 minutes after five, and I went to the rear of
22 Woodlawn Drive, which is where the brick apartment
23 building was. The entrance to 1951 is to the rear
24 of Woodlawn Drive.
25 I noticed that it was a brick apartment

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1 building with three levels and there were apartments
2 on each level.
3 There was an entrance door wherein you
4 entered the apartment, was on the first level. I
5 was directed to Apartment C, which was on the first
6 level and the first apartment on the left as you
7 enter the landing.
8 Q Okay. Let me interrupt you for a moment
9 and show you that which has been marked as State's
10 Exhibit Number Two. It's a chart. I would ask you
11 if you can recognize what this represents?
12 A Yes, I can.
13 Q And would you tell us what it is?
14 A Yes. It's, as you enter 1951 Woodlawn
15 Drive, It shows the hallway with Apartment C on the
16 left, Apartment D directly behind that one,
17 Apartment E next to that, and then Apartment F

directly across or almost directly across from Apartment C.
Q Okay. Does this diagram fairly and accurately reflect the hallway at 1951 Woodlawn Drive?
A Yes, it does.
Q I would move it into evidence as State's Exhibit Number Two.

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(State's Exhibit No. Two, diagram, was entered in evidence.)
BY MS. BROBST:
Q I would now ask to you look at that which has been marked at 28-Y for identification at this time. I would ask you if you can identify that photograph?
A Yes, I can.
Q What is it?
A That's the outside picture of 1951 Woodlawn Drive. It's a picture of the apartment building.
Q Is Apartment Number C shown on that photograph?
A Yes, it is.
Q Is it marked that way?
A Yes, It is. It's marked on the entrance way and marked with a C.
Q And is Apartment F on that photograph?
A Yes, it is.
Q And is it marked in any way?
A Yes, to the right of the entrance door and marked with an F.

Q Does this photograph fairly and accurately reflect the apartment entrance way to

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1951 Woodlawn Drive?
A Yes, it does.
Q Move into evidence as State's Exhibit Number 28-Y.
(State's Exhibit No. 28-Y, photograph, was entered in evidence.)
BY MS. BROBST:
Q To your knowledge, on September 15th, 1988, was Apartment F an occupied or vacant apartment?
A It was a vacant apartment.
Q What did you do after you made your initial observations?
A After I made the hallway observation, I checked with the Crime Lab Detective Roy Frederick, if it was safe to enter the scene, at which time he stated it was and at which time I entered the scene.
Q Did you make any observations about the entrance way?
A Yes, I did. When I approached the apartment itself, I noticed that there was a door which was tan in color and it had a brass colored C at eye level in the center of the door just above the peephole.
Also, I noticed that door opened to the

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right and it had two locking mechanisms. One was a

single cylinder dead bolt, brass in color, and the other was a double lock, door type lock.
Q Did any of those locks appear to be tampered with in any way?
A No, it did not.
Q Did you have occasion to examine the door frame?
A Yes, I did.
Q How did that appear?
A Yes. It appeared normal.
Q I show you 28-B and ask you whether you can identify that?
A Yes. That's a photograph of Apartment C's door as you would view it from standing in the hallway.
Q Does it appear to you to accurately reflect the door as it appeared to you on that date?
A Yes, it does.
Q I show you that which has been marked as State's Exhibit Number 28-A. Can you identify that photograph?
A Yes, I can. This is a photograph of when you first enter into the landing from the outside door, It's a view looking down the hallway.

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Apartment C would be the first opening on the left and then directly behind that would be Apartment D.
Q And does this photograph also truly and accurately represent the hallway as it appeared on that date?
A Yes, it does.
Q I would move both of these photographs

into evidence at this time.
(State's Exhibit No. 28-A and 28-B, photographs, were entered in evidence.)
BY MS. BROBST:
Q After making these observations of the door and the entry way, did you enter the apartment?
A Yes, I did.
Q And what did you observe?
A I observed that when you first enter the apartment, you enter into the living room/dining room type combination area. You're entering into the living room itself. The two rooms are not separated but a combination-type room.
Just inside the doorway, I noticed that there was a small oval braided multicolored rug.
And just to the left of the inside door was a rocker-type recliner, orangish-brown in color. I noticed that the chair faced southeasterly

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direction, facing two television sets.
Q Those television sets, did they appear to you to be tampered with or moved in any way?
A No, they did not. I also --
Q I'm sorry. What else did you observe?
A I observed that located on top of a table to the left of the chair was a marble and wood end-type table, and located on top of the table there was a beige-colored rotary dial telephone displaying the telephone number of 298-6098.
Also on top of the table was a small pair of scissors in the closed position and a silver-colored fingernail file. Next to that was a

14 stack of five paperback books.
15 Q Do you know the titles of those books?
16 A Yes.
17 Q What are they? Can you identify them?
18 A If Tomorrow Comes, Suspects, The Moth,
19 The Prince and the Darkness, and Fleeting Images.
20 Q I'm now going to show you some
21 photographs, Detective. The first photograph which
22 I would ask you to view was that which has been
23 marked as State's Exhibit 28-C. I would ask you to
24 look at the photograph, tell me whether you can
25 identify it?

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1 A Yes, I can.
2 Q What is it?
3 A This is a photograph, if you were
4 standing in the living room looking toward the
5 entrance door, that's the view you would get from
6 that particular view. It shows the rocker chair,
7 the end table, and the picture of the telephone, a
8 stack of books, a table lamp and part of the picture
9 of the sofa.
10 Q Okay. And there's an object lying on
11 the floor Just inside the door. What is that?
12 A Yes. That's a Ryder Rent-A-Truck hat,
13 black and white in color, with a Ryder logo in it.
14 Q Baseball type hat?
15 A Yes, ma'am.
16 Q Next, I'd ask you to look at 28-D.
17 A This is a photograph looking from the
18 dining room area toward the living room area,
19 showing the same rocker/recliner chair, the end

20 tables, with the telephone, stack of books and a
21 lamp again, the sofa with the drawers sitting on top
22 of the sofa. Those drawers matched the end tables
23 located on each side of the sofa and were from the
24 end tables. The contents of those drawers were
25 apparently spilled on the sofa itself. Also the

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1 coffee table, braided rug and the curtains which
2 were hiding the sliding glass doors.
3 Q State's Exhibit 28-F.
4 A This is a closer shot of the coffee
5 table which was located in front of the sofa, and
6 the drawers which were also out of the end tables,
7 that were setting on the sofa and the contents.
8 Q What were the contents, if you recall?
9 A There were several envelopes with
10 various type of bills. There was a Webster's
11 dictionary. Just personal-type items that were
12 written on and placed on the sofa.
13 Q Any currency or anything like that?
14 A No. None.
15 Q And State's Exhibit Number 28-G
16 A State's Exhibit 28-G shows a photograph
17 looking from the area of the entrance door towards
18 the area of the living room, which indicates the
19 braided rug, the coffee table, located in front of
20 the sofa, the two television sets, a floor plant
21 which is located in the one corner, a hassock, and
22 another chair located to the right of the television
23 sets.
24 Q Are these the television sets you've
25 previously described in your testimony?

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A Yes, they are.
Q Do these photographs truly and
accurately represent the apartment as it appeared on
that date?
A Yes, they do.
Q I would move to introduce these into
evidence at this time.
(State's Exhibit Nos. 28-C, 28-D, 28-F,
28-G, photographs were entered an evidence.)
BY MS. BROBST:
Q Directing your attention, again, to
State's Exhibit Number 28-F. There's, as you
described, a marble-topped coffee table. Did you
make any observations about anything that was on
that coffee table?
A Yes, I did. There was a floral
arrangement, back scratcher, a box of Kleenex, and
there was TV Guides, two TV Guides located on the
coffee table itself.
Q Did you examine those TV Guides,
Detective?
A Yes, I did.
Q What did you observe?
MR. SCHLAICH: Objection.
THE COURT: Overruled.

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A I observed that there were two TV
Guides, one for the current week which was dated
9/10 to 9/16, 1988. The second TV Guide was dated
9/17 to 9/23, 1988. And I observed that there was a

book marker in the TV Guide dated 9/10 to to 9/16,
1988, which the marking was for the evening listings
of Thursday, 9/15, 1988.
Q Did you look at the rest of that week
and the following week to see if they were marked in
any way?
A Yes, I did.
MR. SCHLAICH: Objection.
THE COURT: Overruled.
Q And what did you observe?
MR. SCHLAICH: Objection.
THE COURT: Overruled.
A I observed that there were listings for
each of the dates prior to the 15th. There were
markings beside the shows apparently indicating that
there were markings --
MR. SCHLAICH: Objection.
THE COURT: Sustained. Just tell us what
you saw, not your conclusion.
A Yes, sir. I observed markings beside
the evenings' listings and programs up to the 15th,

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but none after that.
Q Okay. How about the 15th itself?
A The 15th itself --
MR. SCHLAICH: Objection.
THE COURT: Overruled.
A The 15th itself, I can't recall whether
it was marked.
Q Okay. Where was the book marker?
A The book marker was in the date of the
15th.

11 Q Okay. What other observations did you
12 make of the apartment?
13 A On the east wall, there was a sliding
14 glass door which had multicolored curtains hanging
15 in front of them. The drapes were closed. Upon
16 viewing the door, it was found to be locked and the
17 charlie bar was in place.
18 Q What's a charlie bar, for the people on
19 the jury who don't know?
20 A The charlie bar is an additional locking
21 bar in addition to a handle-type lock which is
22 located beside the handle for sliding the door
23 open. The charlie bar would be a bar that would
24 come from the non-opening side to keep the opening
25 door from opening when it was put in place.

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1 Q Did you go out on the little balcony?
2 A Yes, I did.
3 O And did you make any observations out
4 there?
5 A Yes, I did. The sliding glass doors led
6 out onto a brown painted wooden-floored porch, which
7 had a layer of dust covering the painted surface.
8 The dust, when observed, appeared to be undisturbed.
9 Q Now, did you have time -- did there come
10 a time when you entered the dining room of this
11 apartment?
12 A Yes, I did. The dining room was
13 adjacent to the living room and, as I stated before,
14 it was a living room/dining room type combination.
15 Q I'm going to show you some additional
16 photographs.

17 The first photograph to which I would
18 direct your attention is photograph 28-I. I would
19 ask you to look at that photograph and tell me
20 whether you can identify it.
21 A Yes, I can.
22 Q And what does it depict?
23 A Depicts a chest of drawers and the
24 dining room area with the drawers slightly opened,
25 one completely pulled out, and there's another one

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1 pulled out to where it's just hanging on the edge
2 there.
3 Q It also shows, if we could hold it up,
4 an empty place. Did you find that drawer?
5 A Yes.
6 Q Where was that?
7 A That was located on the dining room
8 table.
9 Q Photograph 28-H?
10 A This is a shot of the or photograph of
11 the dining room as you view it from walking into the
12 doorway. Shows a dining room table with chairs
13 around it. Shows the drawer which was in the
14 previously described chest of drawers, and several
15 other personal items on the table. There were also
16 some letters and bills that were banded by rubber
17 bands sitting outside the drawer on the table
18 itself.
19 Q And State's Exhibit 28-J.
20 A 28-J, again, shows a picture or
21 photograph from the entrance door into the dining
22 room area, showing the dining room table and also a

23 lady's white slipper-type shoe located on the wooden
24 floor right behind the dining room chair.
25 Q And did you find the match to that shoe?

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1 A Yes, I did.
2 Q Where was it?
3 A On the victim who is located on there.
4 THE COURT: I'm sorry?
5 A Was located in the tub along with the
6 victim.
7 Q Do these three photographs truly and
8 accurately represent the dining room area as it
9 appeared to you on that date and time?
10 A Yes, they do.
11 Q Move to introduce these into evidence at
12 this time.
13 (State's Exhibit Nos. 28-H, 28-I, and
14 28-J, photographs, were entered in evidence.)
15 BY MS. BROBST:
16 Q Now, before we leave the living room,
17 dining room area, I think I neglected to ask you.
18 Did you have a chance to look at the TV Guide that
19 was dated for the week, the week of the 17th of
20 September, 17th through the 23rd?
21 A Yes, I did.
22 Q And did you notice any markings or
23 anything unusual about that book?
24 A No, I didn't.
25 MR. SCHLAICH: Objection.

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1 THE COURT: Overruled.
2 MR. SCHLAICH: Move to strike.
3 THE COURT: Overruled.
4 Q Tell us exactly what you did observe
5 about that book.
6 A I looked at the book. I found that
7 period to be undisturbed. It appeared as though it
8 was new.
9 Q Now, you described a hallway in the last
10 photograph. Did you go down that hallway?
11 A Yes, I did.
12 Q And where did it lead?
13 A The hallway led down to the kitchen on
14 the left, the bathroom on the right, and all the way
15 located to the rear of the residence was the
16 bedroom.
17 Q Okay. Did you go down the hallway into
18 the bedroom?
19 A Into which room?
20 Q The bedroom?
21 A Yes, I did.
22 Q I'm sorry. I should keep my voice up.
23 I'll show you that which has been marked
24 as State's Exhibit Number 28-K and ask you to look
25 at that photograph and tell me whether you recognize

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1 it?
2 A Yes, I do.
3 Q What is it?
4 A That's a photograph, as you proceeded

down the hallway, at the entrance to the bathroom, which would be on the right, and directly behind that would be the entrance to the bedroom. It's a photograph of a multi-colored rug with a brown-colored valuable cash-type box, with its contents apparently spilled on to the rug.
Q Okay. State's Exhibit Number 28-L.
A Yes. This is a photograph of the bedroom itself as you're viewing it from, after you walk into the door, as you're viewing it from the opposite side of the bed looking towards the closet. And a chair which was located in the bedroom, along the corner. In the corner of the picture, you can see the dresser drawers in the lower left.
Q And what's the condition of those dresser drawers?
A They're pulled out.
Q State's Exhibit Number 28-M.
A This is a photograph as you view the bed from in the bedroom. Also the night stand, which is

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located next to the bed with it drawer pulled out. Located on top of the bed, there was a drawer that was found to have been removed from the dresser drawers across from it. The bed appeared to be disarrayed. There were several items laying on top of the bed.
Q State's Exhibit 28-N.
A That's another photograph of the bed itself with contents laying on the bed.
Q Okay. Now, in this photograph, there's

a black suitcase with a red tag on it. Can you tell the members of the jury what that is?
A Yes. That suitcase belongs to the Crime Lab person who took the photographs at my direction.
Q And finally, in the bedroom, State's Exhibit Number 28-O.
A Yes. That's a photograph of the jewelry box with its lid raised with several inexpensive pieces of jewelry located in them. Also, there's a strand of pearls located on top of the dresser itself. There were two small, heart-shaped cache-type boxes on each side of that which had their lids removed.
Q And do these photographs truly and accurately depict the bedroom at that apartment as

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it appeared on that date?
A Yes, they do.
Q Move to introduce them into evidence at this time.
(State's Exhibit Nos. 28-K, 28-L, 28-M, 28-N, and 28-O, photographs, were entered in evidence.)
BY MS. BROBST:
Q Court's indulgence for a moment. I'm sorry.
Now, did there come a time that you left the bedroom that you described and entered the bathroom?
A Yes, I did.
Q Can you describe what you observed in the bathroom?

17 A Yes, the bathroom was located down the
18 hall on the right-hand side. It was directly south
19 of the south wall of the dining room.
20 I found that the door was open and it
21 opened to the left. And I found hanging from a
22 small white hook on the back of the door was a pink
23 nightgown. Behind the door and on the south wall
24 was a bar-type towel rack. I found neatly hanging
25 on the towel rack was a yellow towel and a smaller

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1 pink towel. These items appeared to be unremarkable
2 and undisturbed.
3 Next to the towel rack was a small linen
4 closet with its door open. There were several
5 personal hygiene products located on various shelves
6 inside the closet itself and none of those items
7 appear to be disturbed.
8 The bath tub enclosure was located against
9 the west wall between the north and south wall. And
10 it was white ceramic tile on three of the walls,
11 which encased the bath tub. Hanging from a metal
12 shower curtain rod was a dark green plastic shower
13 curtain which was pulled to the left side of the
14 tub. The curtain appeared to be unremarkable.
15 There was an orange wash cloth on the edge
16 of the tub near the south wall and near the north
17 wall draped over the edge was a small bathroom-type
18 throw rug which was green in color.
19 On the west wall was a soap dish with a
20 green wash cloth. The drain on the tub was closed.
21 There were three chrome bathroom control knobs on
22 the north wall, one for the hot water, which was on

23 the left, cold water which was on the right, and the
24 knob in the middle which controlled the water flow
25 on the shower head to the spout.

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1 The middle, upon directing the middle
2 control knob, I observed that the water directed the
3 flow of water down towards the tub. There was a
4 shower head located just above the ceramic tile on
5 the fourth tile and there was a control knob which
6 allowed the water to flow either down the drain or
7 fill the tub. The control knob was in the position
8 which stopped the flow of water from going down the
9 drain.
10 I observed the bath tub was approximately
11 half full of water. And upon viewing the water I
12 observed the water was cloudy and had a slight
13 greenish color to it. I observed that the victim
14 was lying in the tub on her right aide, with her
15 head at the north end and her feet at the south
16 end. The left side of her body was exposed above
17 the water and the right side was submerged.
18 Observed that she appeared to be a white
19 female in her seventies and that her hair had a
20 light reddish-brown color in it and it was thinning.
21 Q Did you observe anything around her
22 mouth, her nose and mouth?
23 A I observed around the nose and mouth
24 that there was a froth or a mucus froth flow from
25 her nose and mouth.

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1 Q And was she wearing any jewelry?
2 A Yes, she was. She was wearing a white
3 bead-type necklace around her neck and she was
4 wearing a wrist watch.
5 Q Was the watch running?
6 A Yes, it was.
7 Q Did you notice whether there was any
8 footwear on her at any time?
9 A Yes. Her legs were bent at the knee,
10 left leg on top of the right leg, and the right
11 slipper which matched the previously described
12 slipper that was located on the floor on the hall
13 was found upside down in the bath tub at the
14 victim's feet.
15 Q And how was she otherwise attired?
15 A She had a white blouse on and a green
17 skirt.
18 Q And describe the condition of the green
19 skirt.
20 A It was pulled up and her buttocks were
21 exposed.
22 Q Was she wearing underwear?
23 A No, she was not.
24 Q I'm going to show you some photographs,
25 Detective.

* * * *

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* * * *

23 BY MS. BROBST:
24 Q Detective, beginning with State's
25 Exhibit Number 28-P, and referring to the exhibit

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1 numbers on the back, could you please look at these
2 photographs and describe them for the jury?
3 A Sure. Beginning with 28-P, this would
4 be a photograph of the victim as she was lying in
5 the bath tub upon my viewing her. Shows the green
6 rug, the green wash cloth, her skirt, blouse, and
7 that the tub is halfway full, stopper is down.
8 Q Okay. 28-Q?
9 A 28-Q Is another photograph a little bit
10 further away. Again showing the victim as she laid
11 in the bath tub. The green shower curtain is viewed
12 also in this photograph, along with the toilet and a
13 drying rack, a hang drying rack next to the toilet.
14 Q 28-R.
15 A 28-R, upon viewing this photograph, this
16 particular location, the victim had been removed
17 from the tub and I observed on her left hand there
18 was a bruise located on the hand near the thumb.
19 And also her wrist watch is observed in this
20 photograph.
21 Q 28-S.
22 A 28-S was of the victim's right arm, also
23 showing some bruising to the forearm area.
24 Q 28-T.
25 A 28-T is another photograph of the

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1 victim's right arm, again indicating some bruising.
2 Q 28-U.
3 A 28-U is another photograph of the victim
4 after she was removed from the tub. The photograph

shows the mucus that was flowing from the victim's nose and mouth after she was removed from the tub.
Q And 28-V.
A 28-V is another photograph of the victim around the head area, shows some slight bruising to the right side of the neck.
Q And 28-W.
A 28-W shows the condition of the tub after the victim was removed. Shows that there was another towel also in the water and there was a little bit of soap or sudsy-type action on top of the water.
Q Do these photographs truly and accurately depict the bathroom of the apartment as it appeared to you on that date?
A Yes, they do.
Q I would move to introduce these into evidence at this time.
MR. SCHLAICH: I would object, Your Honor, with the exception of 28-W, to which I have no objection.

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THE COURT: Overruled.
(State's Exhibit Nos. 28-P, 28-Q, 28-R, 28-S, 28-T, 28-U, 28-V, 28-W, photographs, were entered in evidence.)
BY MS. BROBST:
Q I'm now going to show you State's Exhibit Number 28-X and ask you to describe the sink that's portrayed in this photograph.
A Okay. The sink was located on the right wall as you walk into the bathroom. It had several

items located on top of the sink, one of them being a bottle of Top Job type cleaner. There was a can of Black Flag insect repellent, and there was a bottle of Sunlight dish washing liquid.
Q Does this photograph truly and accurately depict this portion of the bathroom as it appears on that date?
A Yes, it does.
Q I would move to introduce this into evidence at this time as State's Exhibit 28-X.
(State's Exhibit No. 28-X, photograph, was entered in evidence.)
BY MS. BROBST:
Q Referring to these items which you just described, I would like to now show you what has

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been marked for identification as State's Exhibit Numbers 38, 39 and 40.
I would ask you to look at these items and tell me whether you can identify them, beginning with item number 38.
A Yes. Item number 38 is the Sunlight dish washing bottle that was recovered off the sink.
Q And does it appear to you to be in substantially the same condition as it did on that date?
A Other than the fingerprint dust, it was dusted for prints. Yes, other than that.
Q So you mean that black soot on it?
A Yes.
Q What's that again?
A Fingerprint dust.

17 Q That was not on it when you recovered
18 it?
19 A No, it was not.
20 Q Move to introduce this into evidence as
21 State's Exhibit Number 38.
22 (State's Exhibit No. 38, photograph, was
23 entered in evidence.)
24 BY MS. BROBST:
25 Q State's Exhibit 39?

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1 A Yes. State's Exhibit Number 39 was the
2 Top Job bottle also located on the sink. Again has
3 the fingerprint dusting powder on it which was not
4 on it when originally observed.
5 Q And State's Exhibit Number 40?
6 A State's Exhibit Number 40 was the Black
7 Flag ant and roach killer which was also located on
8 the sink. Appears in the same condition, except for
9 the black fingerprint dust again.
10 Q I would move at this time to introduce
11 State's Exhibit Numbers 39 and 40 into evidence.
12 (State's Exhibit Nos. 39 and 40,
13 photographs, were entered in evidence.)
14 BY MS. BROBST:
15 Q On the bed in the bedroom, can you tell
16 us what articles belonging to the victim that you
17 observed?
18 A There was a red change purse which was
19 empty, and there was also a pocketbook that was
20 empty located on the bed. When you moved some of
21 the items that were on the bed, that's where they
22 were located.

23 Q Okay. The pocketbook, was it open or
24 closed?
25 A It was open.

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1 Q Now, also in one of these photographs is
2 a small hamper, and I would show you State's Exhibit
3 Number 28-L. Do you see the hamper in that
4 photograph?
5 A Yes, I do.
6 Q Is it marked in any way?
7 A Yes, has a circle around it.
8 Q Did you examine the contents of that
9 hamper?
10 A Yes, I did.
11 Q And what did you find?
12 A Have to pardon me for a minute until I
13 find where my notes are.
14 Yes. I noticed that upon viewing the
15 hamper, it was a small white hamper, and upon
16 viewing the contents, there were three small kitchen
17 towels, a pink blouse, and a pair of yellow
18 panties.
19 Q Did there come a time when you left the
20 bathroom and went into the kitchen area?
21 A Yes, I did.
22 Q And can you tell us what you observed at
23 that location?
24 A Yes. In the kitchen when you walked in,
25 there was a table and, on the left wall, with two

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chairs. There was also, on the right, all the kitchen utensils, the faucet and the stove, the sink and all. And found there, the cabinets underneath of the faucet were open at that particular time.
Q And I'll show you what has been marked as State's Exhibit Number KK, 28-KK, and I would ask you to look at that and tell me whether you can identify it.
A Yes, I can.
Q And what is it?
A That's a photograph of the kitchen as you view it from the hallway, showing that the cabinet was open on the bottom with a bottle of fabric softener and a bottle of Sunlight dish detergent, and also that the faucet was running slightly as you viewed It from that angle.
Q And State's Exhibit Number 28-JJ?
A Yes. That is a photograph looking from the hallway into the kitchen, showing the table with the various items located on the top, and some chairs located in the kitchen itself.
Q Does that photograph truly and accurately depict the scene as it appeared on that date?
A Yes, it does.

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Q And does 28-KK?
A Yes, it does.
Q I would move into evidence at this time State's Exhibit Number 28-JJ and KK.

(State's Exhibit Nos. 28-JJ and 28-KK, photographs, were entered in evidence.)
BY MS. BROBST:
Q Your Honor, the State would like to have an opportunity to show the photographs to the jurors who have heard testimony about them. We could do that now or at the end of direct of this witness. I just thought while it was fresh in their mind, I would make that request.
THE COURT: You wish to do it now?
MS. BROBST: Yes, Your Honor.
THE COURT: All right.
(Pause.)
BY MS. BROBST:
Q Detective, did you have occasion on September 21st, 1988, to have a conversation with Jeanetta Washington, a sales clerk at the J.C. Penney store in the Security Square Mall?
A Yes, I did.
Q And based on that conversation, did you return To Security Square Mall to the J.C. Penney

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store on September 22nd, 1988?
A Yes, I did.
Q Now, I'm going to show you two exhibits which have been marked as State's Exhibit Numbers 17 and18 at this time. I'll ask you whether you can identify those exhibits. First, number 17.
A As State's Exhibit Number 17, it shows a client card that Mrs. Washington gave to, she said was filled out on the previous time by a person who identified himself as Kevin Jackson, of 4042 Finney

11 Avenue.
12 Q Okay. And State's Exhibit Number 18.
13 A State's Exhibit Number 18 is the diamond
14 certificate that she filled out when there was a
15 ring that was purchased by the individual. It was
16 indicated the date was September the 16th, 1988 and
17 the name of Florence J. Lacs. The description of
18 the ring that was purchased was a 14 karat diamond
19 cluster with a Stock Number of 244100. The owner's
20 address as indicated on the form was 1951 Walnut
21 Avenue with a zip code of 21229. The total diamond
22 weight on the cluster ring was a .13 and it was
23 priced at $350.
24 Q Okay. And did you have occasion to
25 check and see whether, in Zone 21229, there is an

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1 address of 1951Walnut Avenue?
2 A Yes, I did.
3 Q Is there?
4 A No, there's not.
5 Q Do these two items, State's exhibit --
6 well, is State's Exhibit Number 17 in substantially
7 the same condition as it was when you recovered it?
8 A Yes.
9 Q And does State's Exhibit Number 18
10 accurately reflect the diamond certificate as it was
11 when it was shown to you on that date?
12 A Yes, it does.
13 Q Move to introduce at this time 17 and
14 18.
15 (State's Exhibit Nos. 17 and 18, client
16 card and diamond certificate, were entered in

17 evidence.)
18 BY MS. BROBST:
19 Q Now, with respect to the Kevin Jackson
20 and the address of 4245 Finney Avenue, did you do
21 anything with that address?
22 A Yes, we did.
23 Q The address was 4542 Finney Avenue, but
24 It was no zip code noted and the telephone number
25 was 664-9292. We checked the 1988 Baltimore City

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1 criss-cross, indicated the occupants of the address
2 of 4542 Finney Avenue was a Tyrone Hopkins and the
3 phone number at that address was 466-5491. Then
4 checked with C&P Telephone Information and they
5 revealed a change from 664-9292 to a new phone
6 number of 667-4509. The new phone number was a
7 non-published number in the Cockeysville area.
8 We also checked for Kevin Jackson or K.
9 Jackson in that area and she said she didn't have
10 any listed in that area, and there was no Tyrone
11 Hopkins listed.
12 Q What did you do with the name, Tyrone
13 Hopkins? Did you perform any investigation of that
14 name?
15 A Yes. Checked into Tyrone Hopkins to see
16 if he'd ever been arrested before and found that he
17 had and compared his prints against prints that were
18 recovered at the scene. If there were any, we
19 submit that name.
20 Q So you submitted that name to Crime Lab?
21 A Yes.
22 Q For a print comparison?

23 A That's correct.
24 Q Now, I want to direct your attention
25 forward in time to September 26, 1988. Did you have

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1 an occasion to meet with Chianti Thomas on that
2 date?
3 A Yes, I did.
4 Q And what was your purpose of meeting
5 with her?
6 A I'd received information that she
7 possibly may have observed somebody in the hallway
8 in the 1951 apartment building. So I interviewed
9 her to see if she could provide any information.
10 Q Did you take anything with you for your
11 interview?
12 A Yes, I did.
13 Q And I'm going to show you that which has
14 been marked as State's Exhibit Number 45 and ask you
15 whether you recognize this?
16 A Yes, I do.
17 Q And what is that?
18 A That's a photo show, we conducted a
19 showing of six photographs of individuals. They're
20 all similar in appearance.
21 Q Okay. And this is in a folder with
22 photographs stapled and pieces of manila paper also
23 stapled in place. Is this the way it was when you
24 took it with you on September 26?
25 A Yes, it is.

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1 Q And did you show this to Chianti Thomas?
2 A Yes, I did.
3 Q What did you ask her to do?
4 A Well, I asked her to explain to me what
5 she had observed on that day and she did. And I
6 asked her if she would mind viewing the photo show
7 to see if the person she had observed in the hallway
8 may be contained in the photo show. I told her I
9 wasn't sure if there would be anybody in there she
10 would recognize, but If she would look at the
11 photographs for me.
12 I then asked her to look at the
13 photographs, which she did. She indicated to me
14 Photograph Number Two. I then filled out a
15 photograph or photo identification summary form,
16 which is a form used by the Baltimore County Police
17 Department, upon conducting a photo show, and asked
18 her if she would put the number in, at which time I
19 wrote the number on which number she chose.
20 And then I asked her if she had any
21 comments she wanted to make at the bottom of the
22 form. There's a place for that. She said
23 Photograph Number Two. She said, not for sure. I
24 said, you can write that on the photograph if you
25 like, which she did. Then the witness comment,

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1 that's the closest to the man I saw. Then she
2 signed and dated the form.
3 Q Thank you. And does this folder appear
4 to you to be in substantially the same condition as

it was on the date you showed it to Chianti?
A Yes, it does.
Q And who is Photograph Number Two a photograph of?
MR. SCHLAICH: Objection.
THE COURT: Overruled.
A Photograph Number Two is a photograph of the defendant, Kevin Wiggins.
Q Is that person in court today?
A Yes, he is.
Q Would you indicate where, please?
A Seated at defense table.
Q Indicating for the record, the defendant. I would move to introduce State's Exhibit Number 45 into evidence.
MR. SCHLAICH: Objection.
THE COURT: Overruled.
(State's Exhibit No. 45, photo card, was entered in evidence.)
BY MS. BROBST:
Q Now, Detective, I want you to recall, if

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you would, please, Wednesday night, September 21st, 1988, approximately 11 p.m. Did you get a call that night to go to the Woodlawn station?
A Yes, I did.
Q And did you go to the Woodlawn station?
A Yes, I did go.
Q What happened upon your arrival?
A I was advised that the victim's orange Chevette had been stopped by two officers that worked the Woodlawn district, at that time Corporal

Dennis O'Neill and Officer Coburn, and that the occupants of the vehicle have been taken to Woodlawn station.
Myself and my partner, Detective McDonald, responded to the station. Upon walking into the station, I was advised that the subject that was driving the vehicle was located in an interview room, which is located behind the desk area, and that there was a uniformed officer standing by with him.
I then walked into the interview room and observed that there was a black male there along with the uniformed officer and that the subject had been patted down and the contents of his pockets had been placed on to the table.

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Q Who was that person.
A The person is the defendant, Kevin Wiggins, seated at the defense table.
Q And was his driver's license there on the table?
A He had a wallet there, which the driver's license was contained in.
Q Was it a photo driver's license?
A Yes, it was.
Q I'm going to show you that which has been marked as State's Exhibit Number 19.
THE COURT: You say 19?
Q 19, yes, sir. And ask you to look in this envelope and tell me whether you can identify the content?
A Yes. This is a J.C. Penney card with

17 Jeanetta Washington's name, Fine Jewelry Department,
18 J.C. Penney, 6901 Security Boulevard, Baltimore,
19 Maryland, a telephone number of (301) 298-8100.
20 Q And from whom was that recovered?
21 A Recovered from the defendant.
22 Q Was anything else recovered from the
23 defendant initially right there, in addition to the
24 client card?
25 A In addition to the client card, he had

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1 some jewelry that was taken off of him and placed
2 for safekeeping.
3 Q Okay. And I'll now show you that which
4 has been marked as State's Exhibit Number 32 and ask
5 you whether you can identify the contents of this
6 envelope?
7 A Yes. This is a bill of sale and option
8 to repurchase from Samuelson's Boston Loan Office,
9 which was in the defendant's wallet along with his
10 driver's license. It's indicated an address of 426
11 West Baltimore Street at Paca Street and Baltimore;
12 shows it was in the name of Geraldine M. Armstrong,
13 and it shows that the expiration date was 12/16/88.
14 It shows that the following item was sold
15 and delivered to Boston Loan Office on 9/17/1988,
16 and it indicated the description of the property as
17 one diamond ring with a loose stone and the purchase
18 price of $50.
19 Q Okay. And what do we refer to this as,
20 just in common jargon?
21 A A pawn ticket.
22 Q Does this exhibit, State's Number 32,

23 appear to you to be in substantially the same
24 condition as it was on the date that you took it
25 from the person of the defendant?

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1 A Yes, it is.
2 Q Move to introduce it into evidence at
3 this time.
4 (State's Exhibit No. 32, bill of sale, was
5 entered evidence.)
6 BY MS. BROBST:
7 Q Now, when you met the defendant at
8 Woodlawn, approximately what time was it that you
9 met him?
10 A It was approximately midnight, just
11 before, just prior to midnight. It was about 11:50.
12 Q On the 21st?
13 A Yes.
14 Q And did you give him any rights at that
15 time?
16 A I explained to him what we'd like to, if
17 he didn't mind, transport him to Headquarters and
18 talk to him about the car he was driving.
19 Q And did he agree to do so?
20 A Yes, he did go.
21 Q Did you return to Headquarters?
22 A Yes, we did.
23 Q Where did you go when you got there?
24 A When we got there, we walked into the
25 lower back lot of Headquarters and we arrived at

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0025 hours, which was 12:25 a.m., and we walked into the Sex Crimes Office, which is a normal business-type office with desks and chairs and telephones.
I asked him to have a seat and sit down in the chair, asked him if he wanted anything. And at 0035, he asked for and received one cup of coffee with cream and sugar.
Q Now, did he make any requests of you that were not honored?
A No, he did not.
Q And how were you dressed?
A In the normal business suit, such as I am now.
Q Were you armed?
A Yes.
Q How about your partner, Detective McDonald? How was he dressed?
A The same way.
Q And was he carrying his service revolver?
A When we walk in, we're required to take our gun out of our holsters and place them into a locked locker which is there for officers' safeties. And that's what we did, placed them into

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the locker and removed the key.
Q What were the temperature conditions?
A It was comfortable.
Q The lighting?

A Normal lighting such as it is in the courtroom.
Q Now, at that time did you give the defendant any rights?
A No. He was then, at five minutes after one, he was brought into the captain's office and unhandcuffed. And then at 1:15, I explained to him I would like to speak to him about the car he was driving. He said okay. At 1:15 I read him his Miranda rights.
Q Did you use anything to help you do so?
A Yes, I did.
Q This has been marked as State's Exhibit Number 44. And I would ask you to look in that envelope and see whether you can identify the contents.
A Yes. This is the Miranda warning card that I read to Kevin Wiggins at 115 hours on that date.
Q Would you please show the members of the jury how you did that, how did you read him his

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rights?
A I removed the card from my pocket and advised him that he had, you have the absolute right to remain silent; that anything you say can and will be used against you in a court of law; that you have the right to talk to an attorney before you are questioned and have him present thereafter. If you cannot afford an attorney, one will be appointed by the Circuit Court immediately before any questions are asked. If you desire to answer any questions,

you can at any time insist upon all your rights, at which time all questioning will cease and no further questions will be asked.
I then turned the card over and read the Miranda waiver on the back. I asked him if he, I said, do you understand each of the rights I've explained to you. He indicated that he had. I asked him, having these rights in mind, do you wish to talk to us now. He indicated that he did.
I then asked him if he would initial and date the card. I turned it over. He initialed it KW on the lower right-hand corner and wrote the date of 9/22/88.
Q Because by that time it was after midnight?

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A Yes, it was.
Q After he agreed to waivē his rights and talk to you, what did you do?
A At 1:17, he was -- at 1:15, he was read the Miranda rights and then he waived them and signed the card. He was read and signed a waiver of rights and gave a statement. A waiver of rights is a different form than that of the Miranda card. It basically spells out the same rights again but again they were written, they were re-read to him.
Q At this time, I show you that which has been marked as State's Exhibit Number 41. I would ask you whether you can identify that?
A Yes, I can.
Q What is it?
A This is the copy of the waiver that I

read to Kevin Wiggins.
Q How did you read it to him?
A Well, first off, I filled in the top. I asked him his name and he said Kevin. I said do you have a middle name; he said no. He said Wiggins, that was his last name.
Told me his age was 26. I filled in his date of birth, which he gave me was 9/2/61. I asked him if he read and wrote; he said yes. I asked him

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his education level. He said tenth completed, and then GED from CCB.
I asked him where he was residing at and he indicated none. I then, having been informed by detective or Officers Crabbs and McDonald that they desired to interview him regarding the vehicle he was driving. I then read him rights starting as, listed as number one.
Officers Crabbs and McDonald have informed you that you have the absolute right to remain silent and you cannot be compelled to answer any questions, and need not assist their interrogator's in this or any investigation.
Two, Officers Crabbs and McDonald have informed me anything I say can and will be used against me in a court of law.
Three, Officers Crabbs and McDonald informed me that I have an absolute right to my own attorney to assist, advise and protect my rights. I have further been informed that this right to my attorney exists before any questions are asked of me.

Four, Officers Crabbs and McDonald informed me that if I desire but cannot afford the service of an attorney, no questions will be asked

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of me and that the Circuit Court will appoint an attorney for me.
Five, Officers Crabbs and McDonald have informed me that if I desire to be interviewed, thus waiving my rights, I may at any time during the interview, then and refuse to be interviewed or questioned any further, and insist upon my constitutional rights which will be promptly complied with.
Six, the aforementioned rights have been read aloud to me by Officers Crabbs and McDonald, I then handed Mr. Wiggins a form, asked him if he would please read it over, if he had any questions, he could ask; that asked him after he read it if he would read number seven, which says, "I have read this waiver which sets forth my constitutional rights" and check yes or no, which he checked yes,. And then number 8, "without threats, promises, force or duress, I do hereby waive my rights as set forth and do knowingly and voluntarily agree to be questioned and/or make a statement."
I asked him to sign it, which he did. And I witnessed it myself, and then my partner, Detective McDonald, witnessed it. I put in the date and time, which was 9/22/88 at 0117 hours, and the

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exact location, which was the captain's office in CID Headquarters,
Okay. Now, at what time was the advisement of rights completed?
A The advisement of rights was completed, he read that at 0117 hours, and the advisement of rights was completed a couple minutes after that. Didn't take long to read it through.
Q And did you or Detective McDonald or anybody else in your presence at any time threaten the defendant in any way to get him to make a statement?
A No, we did not.
Q Did either of you coerce him in any way?
A No, we did not.
Q Did you use any threats against him or hold out any promises in order to get a statement from him?
A No, we did not.
Q And did he make a statement?
A Yes, he did.
MR. SCHLAICH: Objection.
THE COURT: Overruled.
A Yes, he did, but he asked that I write the statement for him. And the first line of the

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statement indicated that "I, Kevin Wiggins request that this statement be written for me by Detective W.M. Crabbs. Number 1979, and put an X with a circle and asked him to initial it, which he did.

Q Okay. How many pages was the statement that he made?
A The statement began on page one and was concluded on page nine.
Q And is State's Exhibit Number 41 a true and accurate -- it's a carbon copy of that statement, is it not?
A That's correct.
Q Does it appear to you to be in substantially the same condition as it was on that evening?
A Yes, it does.
Q I would move at this time, Your Honor, to introduce into evidence as State's Exhibit Number 41 the statement of the defendant, and as State's Exhibit Number 44 the Miranda card. And I would ask that Detective Crabbs be allowed to read the statement to the jury. I've provided copies for them to read along.
MR. SCHLAICH: Objection to State's 41, Your Honor.

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THE COURT: Overruled
(State's Exhibit Nos. 41 and 44, statement of defendant and Miranda card, were entered in evidence.)
BY MS. BROBST:
Q I have a copy for the Court of the exhibit.
A That's okay.
Q Detective, would you please read for the jurors the statement that the defendant gave to you?

A Yes. After the first sentence, which is what I read previously, I started a question and answer type session. I asked him the first question, which was, where did you get the 1980 Chevrolet Chevette, Maryland registration PWA 882 --
MR. SCHLAICH: Your Honor, excuse me. Your Honor, would you grant a continuing objection on anything having to do with the statement?
THE COURT: Yes.
MR. SCHLAICH: Thank you.
BY MS. BROBST:
Q You may proceed.
A Thank you. Start over again with the question. Where did you get the 1980 Chevrolet Chevette, Maryland registration PWA 882, that you

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were riding in this evening? His answer was, at Roy Rogers on Social Security. It was on the lot with the keys in it, and I stood out for a minute and I was thinking about taking it then but I didn't. I want and got something to eat, but when I came out it was still on the side with the keys in it. So looked around and then got in it. I was just driving it around and I told my friend Geraldine that it was a buddy of mine's car and that I was staying in it.
Then he said he went to two job sites. I was just driving around and I got a, found a few things in the car. I found one ring and some letters and papers and beer cans that I threw out.
Next question I asked him was, when did you take the car from Roy Rogers lot? His answer

17 was, Friday, around one in the afternoon.
18 Then asked him, which Friday? His answer
19 was, last Friday.
20 Then asked, did you see anyone around the
21 car? His answer was, no, it was people outside, and
22 that's the reason I stood around for a while before
23 I got in it. Keys was in the ignition big as day.
24 You could see it. Window was cracked down.
25 I then asked him, what do you mean by the

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1 window cracked down and which window? His answer
2 was, it was down. The driver's side.
3 Next question I asked was, describe the
4 ring that you say you found. His answer was, small,
5 14 karat gold ring, I found it on the floor. It's
6 dug up like shags. I found a bunch of letters.
7 Next question was, who were the letters
8 addressed to? His answer was, I didn't read them.
9 just threw them away.
10 Next question I asked was, did the ring
11 you found have any stones? His answer was, yeah, it
12 had a stone. It was the only thing I found was the
13 one ring. And it was on the floor with the trash.
14 I don't know if the ring fell out of a bag or off
15 their hand. I just don't know. It was on the
16 floor.
17 Next question I asked was, what did you do
18 with the ring? His answer was, I lied to Geraldine
19 again about that, too. I told her I was doing
20 something for my friend and I found it under a
21 sofa. He said he didn't know who it was so I took
22 it and had her pawn for me.

23 Next question was, who is this friend?
24 Answer was, I wasn't cleaning. I just lied.
25 Next question was, where did you pawn it?

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1 The answer was, the pawn shop is right Downtown near
2 the movie theater, Samuelson's Boston Loan Office,
3 Incorporated.
4 Next question was, what two job sites did
5 you go to? His answer was, one is out near the
6 apartments by the 7-11 near the subway, cause the
7 guys was by there painting.
8 Next question was, where was the other job
9 site? His answer was, I was trying to go down
10 Russell Street. It was a temporary service.
11 Next question was, did you talk to anybody
12 at the job site and who? His answer was, yes, his
13 name was Joe.
14 Next question was, who did you work for
15 and what was their name? His answer was, Joe, a
16 private contractor. It was just me, him, his
17 brother and his mother. I was just there three days
18 and he told me that it wasn't going to work out.
19 Next question was, do you know his
20 brother's name or his mother's name? His answer was
21 no.
22 Next question was, which apartments did
23 you paint and do you know the address? The answer
24 was, 2051. I put up some sheet rock but I don't
25 know the number.

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Next question was, was 2051 to the rear of the apartment? His answer was, no, it was facing the street and the other place was facing the lot. Next question, did you talk to anybody there? His answer was, no, I just did my work. We were in vacant apartments only. Next question was, which three days did you work? His answer was, just this past Wednesday, Thursday and Friday. The next question was, which floor were the apartments on? His answer, first was, the one from the back was on the third floor. The other one was on the basement. Then I asked him later on if he wanted to change anything in there, and to this question he came back and crossed out third floor and initialed KW in each instance and put "top." The next question was, can you describe the apartment building? The answer was, door was brown with gold numbers, brass numbers. Outside was brick. Next question was, what was Joe doing? His answer was, he was working, and I was told I had, I was had to see the guy for a job. I didn't know if his name was Joe or not. I talked. Next question was, can you describe Joe?

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Answer was, tall, white with black and gray hair, heavyset. I was told to call him and I did that night but the line was busy. Next question was, do you know whose car

it was that you were driving? The answer was, no, all of the people there was no way to know whose it was. Next question was, did you look in the glove box? The answer was, after I drove it away, I stopped on a lot and looked through the car. Next question was, was the registration in the glove box? His answer was, I'm not too sure. Next question is, did you ever see a registration for the car? His answer was, I didn't notice it. Next question is, what type of work do you do? His answer was, painting. Next question was, where was the last Job? Answer was, Woodlawn Apartments, make a right at the fire station and the apartments are on the right. Next question, was the apartment on the top, was it in front or back? His answer was, was in the back. Next question was, do you know what he

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drove, the guy you worked for? His answer was, yeah, a brown truck. Next question is, what time did you work on Wednesday? His answer was, around 8 a.m. to 4 p.m. Next question is, what time did you work on Thursday? The answer was, 8:30 a.m. till 4 p.m. Next question was, what time did you work on Friday? His answer was, till 12 noon. Next question I asked was, why only to 12

11 noon? His answer was, because I was trying to get
12 money to pay Brenda Carter at 1013 Walnut Avenue,
13 telephone number 233-3959 so she would hold my stuff
14 for me, but I never made it there because I went to
15 Roy's to get something to eat and that's when I
16 found the car.
17 Next question was, who did you tell her,
18 the girl, about the cards? His answer was, I told
19 her it was a friend of mine's, not to worry about
20 them, and she signed the name for them. I had four
21 cards, Sears, Penney's, Citgo and Hecht's.
22 Have you ever seen the car before, was the
23 next question. His answer was, I can't say I never
24 seen it before in my life but I saw it at Roy's.
25 Next question was, did you tell her to

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1 sign and her name? His answer is, I Just told her
2 to sign the name on there of my friend.
3 Next question was, what is this friend's
4 name? His answer is, Geraldine Armstrong, 4103
5 Paran Avenue in Randallstown.
6 Next question was, which stores did you go
7 to and use the credit cards? His answer, was
8 Hecht's near Randallstown, Sears, Penney's, Sears
9 and Penney's were the same place, Citgo used at one
10 gas station.
11 Next question was, who presented the cards
12 to the salespeople? The answer was, I did, but she
13 signed the receipt. I asked her to sign my friend's
14 name.
15 The next question was, did she sign all of
16 the receipts? His answer was, yeah, cause I told

17 her my handwriting was bad.
18 Next question was, how did you get to the
19 stores? The answer was, driving in the car.
20 Question, which car? The answer was, the
21 car that I had, the one they got me in.
22 The next question was, where did you get
23 the cards? The answer was, in a bag on the floor in
24 the car. They were in a bag with some other cards
25 and some trash.

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1 The next question was what other cards
2 were in the bag? Answer was, I wasn't paying no
3 mind but it was a lot of them.
4 The next question was, what items did you
5 purchase with the cards? His answer was, the two
6 rings, J.C. Penney, the diamond ring, J.C. Penney,
7 shoes, J.C. Penney, socks, between J.C. Penney and
8 Sears, couple of men's sweaters, and he indicated
9 two, Sears, but I'm not sure, and three pairs of
10 men's pants, Sears, but I'm not sure. I know that I
11 found the credit cards and the ring, the trash that
12 I threw out all was in the car.
13 Next question was, were you in the brown
14 truck on Thursday? The answer was, yeah, I be in
15 the truck all the time because he drives me to the
16 building and drops me off where he wants me to work
17 at.
18 Next question was, how did you get into
19 the apartments to work? His answer was, the guy I
20 worked with would let me in with a key.
21 Next question was, did he ever give you a
22 key to get in by yourself? Hie answer was no.

23 Next question, did you work in the
24 apartment on Friday by yourself? His answer was,
25 yeah, I was working over on the same side as the

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1 office was.
2 Next question was, how about Thursday?
3 His answer was, I worked in the same apartment as
4 Friday but both of the brothers were with me and so
5 was the mother.
6 The next question was, if you obtained the
7 car and the credit cards on Friday, how could you
8 have used the woman's Hecht's credit card on
9 Thursday night? At that time, his answer was, I
10 won't say any more until I talk to my attorney.
11 At that time, questioning was stopped.
12 Q Now, was the defendant booked using
13 routine booking procedures?
14 A Yes, he was.
15 Q And do you have the form that was used
16 at that time with you?
17 A Yes, I do.
18 Q And what did he give as his address when
19 he was booked?
20 A His address that he gave was 1013 Walnut
21 Avenue with a zip code of 21229.
22 THE COURT: Ladies and gentlemen, would
23 you pass those forms down, please?
24 BY MS. BROBST:
25 Q Detective, the statement which you've

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1 just read refers to, I found the car last Friday.
2 If the statement was given on September 22nd, 1988,
3 what would have been the date of the last Friday?
4 A That would have bean the 16th.
5 Q Now, did there come a time when you
6 patted the defendant down?
7 A Yes, there was. Prior to placing him in
8 the cell.
9 Q And I'm going to show you that which has
10 been marked as State's Exhibit Number 31 and ask you
11 whether you can identify it.
12 A Yes. Upon patting the subject down
13 before placing him into the cell, as per proper
14 procedure, located in his left front pants pocket
15 was found this latex rubber style glove.
16 MR. SCHLAICH: Objection.
17 THE COURT: Overruled.
18 Q Could you put that back in the
19 envelope?
20 A Sure.
21 Q And does that appear to you to be in
22 substantially the same condition as it did on the
23 date you recovered it?
24 A With the subject of the one finger cut
25 off, yes.

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1 Q The finger was not cut off at that date?
2 A No. It was intact completely.
3 Q I'll move to introduce that into
4 evidence.

MR. SCHLAICH: What number is that, please?
THE CLERK: 31.
THE COURT: You said objection?
MR. SCHLAICH: 31.
THE CLERK: Yes.
MR. SCHLAICH: I do object, yes.
THE COURT: Overruled.
(State's Exhibit No. 31, glove, was entered in evidence.)
BY MS. BROBST:
Q Now, directing your attention back to State's Exhibit Number 32. Did you go down to Samuelson's Boston Loan Office?
A Yes, I did.
Q What date was that?
A That was on -- pardon me until I get my notes. That was on 10/3/1988 at 20 minutes after one in the evening, responded to Baltimore City Police Department's Pawn Shop Unit, and provided Sergeant Taylor with a copy of all their related

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reports concerning this case in order to recover the ring that was indicated on the Samuelson's Boston Loan Pawn Shop ticket.
Upon doing that, he called down to Samuelson's and explained that we'd be on our way down. We then responded down and presented this pawn shop ticket, at which time we were given a ring by the manager there.
Q And I'd ask you to look at that which has been marked as State's Exhibit Number 37 and ask

you whether you can identify that?
A Yes. This is the envelope that the ring was in when we picked it up, indicating Boston Loan Office Incorporated, and this is the ring that we recovered from down there, what we were given that was pawned using that pawn shop ticket.
Q Does the ring appear to you to be in substantially the same condition as it was on the date when you recovered it from the pawn shop?
A Yes, it does.
Q Thank you. I would move at this time to introduce State's Exhibit Number 37 into evidence. I think it's just been identified. I could be wrong.
(State's Exhibit No. 37, ring, was entered

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in evidence.)

* * * *

[WITNESS: DETECTIVE WILLIAM CRABBS]
BY MS. NETHERCOTT:
Q Good afternoon, Detective. Detective

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Crabbs, you arrived at the crime scene here at about five, five minutes after five?
A Yes, ma'am.
Q On the 17th?
A Yes, ma'am.
Q You were there for some amount of time, isn't that correct?
A Yes, it is.

Q Okay. Can you give us an idea how much
time? Several hours?
A Yes.
Q And you had an opportunity to seize, I
believe, two bottles of medication, is that correct,
that were, I believe they were found in the
bathroom?
A Yes.
Q Can you tell us what those medications
were, please?
A Sure. Located in the medicine cabinet
which was above the sink in the bathroom, there were
two prescription drug bottles contained in the
cabinet, both with the victim's name on them. Both
the labels indicated they were purchased on Woodlawn
Pharmacy on Windsor Mill Road, with a telephone
number of 944-4600.

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The one bottle contained Digoxin, .25
milligrams, and the prescription number was 465201.
Date on the bottle was 10/13/1986. The instructions
were one tablet every morning and Dr. Margolis
issued the prescription. The prescription expired
on 5 of '89 and it had zero refills indicated.
The second bottle had the same label but
the prescription number was 4620898 and it was dated
10/2 of '87. It contained Elavil, 50 milligrams.
The instructions were one at bed time. The
prescription was also issued by Dr. Margolis and
expired on 7 of '89 and indicated six refills.
Q Thank you. Detective, did you accompany
the officials from the Medical Examiner's Office who

arrived to the office of the Chief Medical Examiner
Downtown?
A No, I did not.
Q You did at some point, however, go down
to the Medical Examiner's Office?
A Yes, I did.
Q Correct? Can you tell us what day you
did that?
A That would have been the very next
morning, which would have been Sunday morning.
Q Okay. Would you tell us what day that

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was, what the date was?
A 9/18.
Q Okay. And you, in fact, you actually
observed the autopsy, correct?
A Yes.
Q And that autopsy was performed by Dr.
Korell, is that correct?
A Yes.
Q And it was performed Sunday morning?
A I believe so, yes.
Q Okay. Did anyone assist Dr. Korell with
that autopsy? She performed that alone, didn't she?
A Yes, to the best I remember.
Q And on that date, you also, you provided
Dr. Korell with some items from the scene, correct?
A She provided me with some -- originally,
there was some items that were sent down with the
body and she provided me with some items before I
left.
Q Okay. Specifically, you provided Dr.

21 Korell with the two prescription medications that
22 you just mentioned, correct, the Digoxin and the
23 Elavil?
24 A Yes.
25 Q Now, I note from the photograph marked

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1 State's Exhibit 28-JJ -- perhaps I could see that
2 photograph.
3 Detective Crabbs, I'll show you what's
4 been marked for identification as State's Exhibit
5 28-JJ, ask you if you recognize that?
6 A Yes.
7 Q Okay. There's a number of what appear
8 to be prescription bottles on the kitchen table
9 there, correct?
10 A A few, yes, ma'am.
11 Q Okay. Did you seize those?
12 A I don't remember, to be honest with you.
13 Q Okay. They were provided to the medical
14 examiner, correct?
15 A They were?
16 Q They were not?
17 A They were not? I don't know, to be
18 honest with you.
19 Q You don't have any memory of it, do you?
20 A No, I do not.
21 Q And do you have notes, or at least have
22 memory of submitting the other two, correct?
23 A I remember that there were two going
24 down, yes, ma'am.
25 Q And in fact, the Medical Examiner's

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1 Office tested chemically for the presence of those,
2 the components of the drugs Digoxin and Elavil,
3 correct?
4 A In addition to any drugs.
5 Q Right. Did you take those photographs?
6 A They were taken at my direction by the
7 Crime Lab.
8 Q Okay. Do you recall what time they were
9 taken?
10 A Not really. We were there most of the
11 night. I don't remember exactly what time they were
12 taken.
13 THE COURT: Keep your voice up for us,
14 Detective.
15 A Yes. I'm not sure exactly what time
16 they were taken, We were there most of the night.
17 Q Well, the pictures of Ms. Lacs showing
18 her in that tub were taken prior to the arrival of
19 Dr. Felsenberg, correct?
20 A Yes.
21 Q And the pictures that were taken of her
22 after she had been removed from that tub were taken
23 after that, correct, after Dr. Felsenberg's arrival?
24 A Yes.
25 Q Okay. It's also correct, there's no

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1 window in the bathroom, correct.
2 A That's correct.
3 Q Detective, you had occasion to be in the
4 apartment for several hours. You didn't notice

anything unusual about the temperature, correct? It was just normal room temperature, right?
A Yes.
Q Detective Crabbs, I'm going to show you something that's marked Defendant's Exhibit Three. See it for a second, please.
Detective, I'll show you what's been marked as Defendant's Exhibit Three, ask you to examine the contents of that bag. Would you tell us what that is?
A That's the Ryder rental hat that was located just inside the doorway near the closet with the tag still attached.
Q Okay. And you seized that hat?
A Yes.
Q Okay. Thanks.
Now, Detective, on October 13th, 1988, you went to two scores; the J.C. Penney was one of them, and, I believe, Hecht Company was the other one. You went there with that hat to try and determine if the store sold those type of hats, correct?

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A I went there looking for the hat. I didn't take the hat with me.
Q Okay. What was the result?
A I found neither one of those stores sold that type of hat.
Q Court's indulgence for one moment. Now, you also developed information during the course of investigating this homicide that Mr. Wiggins had been in a Sears store in the Columbia Mall?
A Yes.

Q Okay. And you went on the 24th of October to the Sears store to determine whether the Ryder hat, that is the exhibit I've just shown you, is sold there, correct?
A That's correct.
Q And at all of thoes locations, Penney's, Hecht and Sears, the investigation was negative, correct?
A That's correct.
Q Now, it's also correct on December 8th, you went to the Rockdale Auto Service Center on Liberty Road?
A Yes.
Q And you went there in attempt to find records relating to Mr. Wiggins, right?

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A Yes
Q And that was negative, also, correct?
A That's correct.
Q And you went there in an attempt to see if anyone there would identify that hat, correct?
A That's correct.
Q And no one did, correct?
A That's correct.
Q So the end result was that nobody had seen a hat of that type, correct?
A That's correct.
Q Okay. And also, with regard to a Citgo card, you had occasion to trace the use of the Citgo card during the month of September, correct?
A Yes, I did.
Q And It's true, is it not, that you

17 obtained information that that card had last been
18 used on the 20th of September?
19 A According to my notes, when I contacted
20 Citgo, they advised that the purchase was made on
21 9/16 but that additional information was not
22 available at that time.
23 Q Okay. But was there not also
24 information that you received that it was used on
25 the 20th?

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1 A It's possible. I don't remember.
2 Q Well, could you just check your notes?
3 A Sure.
4 Q See if you can find it. Thanks.
5 Detective, if it would assist you here, I think I've
6 got the slips.
7 A Okay,
8 Q Showing you what's marked as State's
9 Exhibit 46. Open that up.
10 A Yes, thank you. These are the two Citgo
11 credit card slips that were sent to me from Citgo,
12 one being a hard copy, one being a photostatic
13 copy. First date on the one indicates it was
14 9/16/88. And the second date was 9/19/1988.
15 Q Okay. Thank you, Officer.
16 MR. SCHLAICH: Court's indulgence one
17 moment.
18 BY MS. NETHERCOTT:
19 Q Detective Crabbs, when you were in the
20 bathroom, is it correct that the fan was off, right?
21 A That's correct.
22 Q It's also true during the course of the

23 time you spent in the apartment, you seized a number
24 of items, correct, some of which are in this
25 courtroom today?

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1 A Yes.
2 Q But you didn't seize the TV Guide,
3 correct?
4 A No, I did not.

* * * *

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* * * *

14 BY MS. BROBST: [WITNESS: RICHARD HERSKOVITZ]
15 Q Mr. Herskovitz, are you employed?
16 A Yes.
17 Q How are you employed?
18 A At Samuelson's Boston Loan Office.
19 Q And where's that located?
20 A 426 West Baltimore Street.
21 Q Is that in Baltimore City?
22 A Baltimore, 21201.
23 Q Is it near the Arena?
24 A Two blocks away.
25 Q I would like to show you what which has

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1 been marked as State's Exhibit Number 32 and I'd ask
2 you to look in this envelope and ask you whether you
3 can identity the contents?
4 A It's one of our purchase tickets.
5 Q And what's the date on that purchase
6 ticket?

A September 17th, 1988.
Q And what does that indicate to you about
what transpired?
A That on September 17th, 1988, somebody
came in presenting -- Geraldine Armstrong came in at
5:04 p.m. and pawned a diamond ring for $50.
Q Did you make any notations about the
condition of that ring?
A No. There's a comment on here that the
diamond is loose in the mount.
Q Now, I'm going to show you that which
has been marked as State's Exhibit Number 42 and ask
you whether you can identify that document?
A That's a read-out from our computer for
the purchase.
Q And is this read-out kept in the regular
course of business at Samuelson's Boston Loan?
A Yes, it is.
Q And was this particular one kept in the

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regular course of business?
A Yes, it is.
Q Does that indicate to you anything about
the transaction that occurred on that date?
A The same thing I just said, that on the,
on -- what date was it -- on the 17th, that
Geraldine Armstrong came in and pawned a diamond
ring.
Q What year was that?
A 1988.
Q Now, I'm going to show you that which
has been marked as State's Exhibit Number 37. I

would ask you to open this envelope and tell me
whether you recognize the contents and if so, how?
A Looks like a diamond ring. I have to
check the number to see if it was the one that was
pawned.
THE COURT: Sir, you're talking down.
Talk into the mike so the jurors can hear you.
A It looks like a diamond ring. When we
pawn a diamond ring, we'll inscribe a number inside
the shank. The shank is the metal part that's
around the back that corresponds to the ticket
number. If you want to hold on a second, I'll check
to make sure it's the number that's on the ticket.

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Q Thank you.
A The number E-13995 is inscribed inside
the ring. That was the ring that Geraldine
Armstrong pawned that day.
Q Thank you, sir. I would move to
introduce into evidence at this time State's Exhibit
Number 42. Your witness.
(State's Exhibit No. 42, computer
read-out, was entered in evidence.)

* * * *

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* * * *

[WITNESS SERGEANT DENNIS O'NEILL]
BY MS. BROBST:
Q Sergeant O'Neill, how long have you been
assigned to the First Precinct of the Baltimore
County Police Department?

10 A Since December of '88.
11 Q December of '88?
12 A That's correct.
13 Q I would like now to direct your
14 attention back in time to September 21st, 1988.
15 What was your assignment at that time?
16 A I was a supervisor in charge of
17 selective enforcement at Woodlawn precinct.
18 Q And specifically, on that date at
19 approximately 10:45 p.m., do you recall your
20 location?
21 A Yes, I do.
22 Q Where were you?
23 A I was on Windsor Mill Road headed
24 westbound at Lord Baltimore Drive.
25 Q And what had you been doing?

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1 A We were, earlier that evening, we made
2 several arrests concerning narcotics violations.
3 Q You say we. Were you with anyone?
4 A I was with Detective Donald Coburn.
5 Q Were you all in uniform or --
6 A No, we were in an unmarked, non-descript
7 police unit.
8 Q And how were you dressed?
9 A Casual, beards, long hair and things
10 like that.
11 Q Now, did there come a time when you made
12 an unusual observation?
13 A Yes. Approximately 2246 hours, we were
14 westbound on Windsor Mill approaching Lord Baltimore
15 when we observed, when I observed an orange

16 Chevrolet Chevette bearing Maryland tags W,
17 correction, PWA 882.
18 The vehicle was on northbound Lord
19 Baltimore and it turned on to westbound Windsor Mill
20 Road. We were directly behind the vehicle.
21 As soon as I saw the tag number, we
22 immediately recognized that this is a vehicle wanted
23 in connection with a homicide.
24 Q So what did you do?
25 A We immediately called for additional

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1 marked units and stayed close as we could.
2 Incidentally, it was directly in front of the police
3 station.
4 Police unit was pulling out of the
5 station. We activated a blue emergency light, which
6 is provided for unmarked police units and instruct,
7 I instructed the marked unit to pull in front of the
8 orange vehicle.
9 After activating our emergency equipment
10 and my unit and the traffic unit, the operator of
11 the vehicle, seated at the trial table to my right,
12 stopped the vehicle and we exited the vehicle and
13 walked towards it.
14 Q Okay. I assume you had your guns drawn?
15 A That's correct.
16 Q And did you take anybody out of the car?
17 A Yes. I went up to the right-hand side
18 of the passenger side of the car and seated in the
19 passenger side was a black female with a small
20 child.
21 The defendant was seated in the driver's

side, and my partner went up to the left side of the
car and got him out.
Q And did he make any statements at that
time?

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A Right at that moment, he did not. We
held him in that position until additional units
arrived to make sure the area was safe.
As soon as the additional units arrived
there, we got the child out of there as quickly as
possible and then the woman. And I walked around to
the passenger side of the vehicle where the
defendant turned directly to us and said, she didn't
have anything to do with this.
Q Now, I'm going to show you some
photographs, if you wouldn't mind looking at them
for me, please.
I'm showing you that which has been marked
as State's Exhibit Number 1-D and 1-E. And would
you look at these two photographs and tell me
whether you recognize those photographs?
A Yes. This is the orange Chevette
bearing the Maryland tags, which was stopped that
night, operated by the defendant.
Q And does it appear to you to be in
substantially the same condition as it was when you
stopped it?
A Yes.
Q Now showing you State's Exhibit Number
1-B and 1-C. I would ask you to look at these two

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photographs and tell me whether you can identify
them?
A Yes. This is a photograph of the
interior of the vehicle, a close-up with an ignition
key hanging from the ignition on a key ring, and
also a photograph from the passenger side of the
vehicle with the door open to the inside of the
vehicle.
Q And do these photographs as well appear
to you to be in substantially the same condition as
they were on that night?
A Yes.
Q I would move at this time to introduce
into evidence State's Exhibit Numbers 1-B and C.
THE COURT: 1-D and 1-C?
MS. BROBST: B and C.
THE COURT: B and C.
(State's Exhibits 1-B and 1-C,
photographs, were entered in evidence.)
BY MS. BROBST:
Q Was the defendant then taken into the
Woodlawn station?
A He was handcuffed and taken to the
Woodlawn station.
Q And did you call Homicide?

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A Yes we did.
Q At any time when he was in your presence
did he request an attorney?
A I didn't talk to the gentlemen at all.

5 No, he did not.
6 Q Thank you. Your Witness.
7 CROSS EXAMINATION
8 BY MR. SCHLAICH:
9 Q Sergeant O'Neill, you did have occasion
10 to look in the car that you stopped, correct?
11 A Yes.
12 Q And you had an occasion to look into the
13 back seat area as well as the front seat area,
14 correct?
15 A I looked into it, yes.
16 Q Okay. And you recall, do you not, that
17 the back seat floor was filled with trash basically,
18 correct?
19 A I can't remember.

* * * *

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* * * *

3 BY MR. SCHLAICH:
4 Q Sergeant O'Neill, is it correct that
5 both sides of the car were approached by officers
6 with guns drawn when the car was stopped?
7 A Yes.
8 Q That would include, then, the side that
9 the black female was on, correct?
10 A I walked up to that side.

* * * *

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* * * *

7 MS. BROBST: Members of the jury, it has
8 hereby stipulated and agreed by and between the
9 State of Maryland and Kevin Wiggins, the defendant
10 on trial under Criminal Case Number 88-CR-5464, that
11 the following is a true and accurate fact: The 1980

12 Chevrolet Chevette owned by Florence Lacs had a
13 value of over $300, and it is so stipulated. Move
14 to introduce this original into evidence as State's
15 Exhibit Number 34.
16 THE COURT: Pass those back now, please.
17 (State's Exhibit No. 34, stipulation, was
18 entered in evidence.)
19 MS. BROBST: Your Honor, if it please the
20 Court, we have also entered into a stipulation which
21 is marked State's Exhibit Number 43. Copies for
22 defense counsel.
23 As to State's Exhibit Number 43, members
24 of the jury, it is hereby stipulated and agreed by
25 and between the State of Maryland and Kevin Wiggins,

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1 the defendant on trial under Criminal Case Number
2 88-CR-5464, that Agent Roger Martz of the Federal
3 Bureau of Investigation, a qualified chemist, ran a
4 series of tests on evidence submitted and the
5 following are the results of those tests.
6 An examination was conducted of the water
7 taken from the tub where Florence Lacs' body was
8 found. That examination revealed that propoxur, the
9 active ingredient of Black Flag, was found in the
10 water.
11 An examination was conducted on the rubber
12 glove that was found on the defendant's person when
13 he was arrested on September 21, 1988. That
14 examination revealed that no residues consistent
15 with Top Job, Drano, Sunlight or Black Flag were
16 identified on the rubber glove.
17 An examination was conducted on the slip

18 and blouse worn by Florence Lacs when she was found
19 in the tub. That examination revealed that the
20 green stains on the slip and blouse could not be
21 associated with residues consistent with Top Job,
22 Sunlight, Black Flag or Drano.
23 An examination was conducted on the slip
24 and blouse warn by Florence Lacs when she was found
25 in the tub, to the rubber glove that was found on

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1 the defendant's person when he was arrested on
2 September 21, 1988. That examination revealed that
3 the stains on the slip and blouse could not be
4 associated with the rubber glove, and it is so
5 stipulated.
6 THE COURT: If you will pass those back,
7 please.
8 (State's Exhibit No. 43, stipulation, was
9 entered in evidence.)
10 MS. BROBST: Your Honor, we have one final
11 stipulation today which I would ask to have a copy
12 marked as the exhibit which will be States' Exhibit
13 Number 33.
14 Members of the jury, it be hereby
15 stipulated and agreed by and between the State of
16 Maryland and Kevin Wiggins, the defendant on trial
17 under Criminal Case Number 88-CR-5464, that the body
18 of Florence Georgiana Lacs, the date of birth,
19 9/26/11, the person mentioned in Baltimore County
20 Indictment Number 88-CR-5464, is the same body of a
21 white female, age 76, height 5'7" inches, weight 143
22 pounds, found at 1951, that's a typo, it should be
23 1951-C, Woodlawn Drive in Baltimore County,

24 Maryland, and that the said Florence Georgiana Lacs
25 was pronounced dead at that location by Dr. Stanley

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1 Felsenberg at approximately 9 p.m. on September
2 17th, 1988 and then taken to the Office of the Chief
3 Medical Examiner, State of Maryland, where an
4 autopsy was performed on said body by Margarita
5 Korell, M.D., Assistant Medical Examiner of the
6 State of Maryland on September 18, 1988 at 9 a.m.,
7 and it is so stipulated,
8 (State's Exhibit No. 33, stipulation, was
9 entered in evidence.)
10 THE COURT: Would you pass those along,
11 please?
12 MS. BROBST: Your Honor, I would at this
13 time move to amend that address to 1951-C on the
14 original, which has been marked as State's Exhibit
15 Number 33.
16 THE COURT: Any objection?
17 MR. SCHLAICH: No problem.

* * * *

STATE OF MARYLAND
vs.
KEVIN WIGGINS

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
CASE NO. 88 CR 5464

STIPULATION

It is hereby stipulated and agreed by and between the State of Maryland and Kevin Wiggins, the Defendant on trial under criminal case 88 CR 5464, that the following are the true and accurate facts:

1. That the Defendant was in possession of Florence Lacs' Hecht's credit card, account #515436664 on September 15 and 16, 1988, without Florence Lacs' permission;

2. That on September 15, 1988, Thursday, the Defendant, along with Geraldine Armstrong, purchased the following items from the Hecht's Company Department Store, located at Security Square Mall. Payment for these items was made by using Florence Lacs' Hecht's credit card without her permission:

a. At 8:57 p.m., form the Fine Jewelry Department - one Herring Bone chain; value $328.13 Exhibit # 4

b. At 9:14 p.m., from the Ladies Sportwear Department - three articles of clothing; value $153.28 Exhibit # 5

c. At 9:19 p.m., from the Fashion Watches Department - one Swatch watch, value $36.75 Exhibit # 6

3. That on September 16, 1988, Friday, the Defendant along with Geraldine Armstrong purchased the following items from the Hecht's Company Department Store located at Security Square Mall. Payment for these items was made by using Florence Lacs' Hecht's credit card without her permission:

a. At 3:51 p.m., from the Mens Department - two articles of clothing, value $74.93 Exhibit # 7

4. That the purchase of Naturalizer shoes, value $40.95 on August 21, 1988 at the Hecht's Company Department Store was made by Florence Lacs, and the payment on the Hecht's charge account on September 29, 1988 was made on Florence Lacs' behalf by her nephew-in-law, Charles Stauffer: Exhibit # 8 and 9.

5. That there had been no other activity on Florence Lacs' Hecht's Company credit card between August 21, 1988 and September 15, 1988;

6. That the Defendant was in possession of Florence Lacs' J.C. Penney's credit card, account # 0146339734 on September 15 and 16, 1988 without Florence Lacs' permission;

7. That on September 16, 1988, Friday, the Defendant, along with Geraldine Armstrong, purchased the following items from J.C. Penney's, located at Security Square Mall. Payment for these items was made by using Florence Lacs' J.C. Penney's credit card without her permission:

a. From the Fine Jewelry Department - one ring; 14k Gold with a dark blue sapphire

stone, surrounded on one side with diamond chips, value $468.59 Exhibit # 10

i) This ring was recovered from Defendant's person when he was arrested on September 21, 1988 Exhibit # 11

b. From the Fine Jewelry Department - one ring; 10k Gold with a gray/white cat's eye stone, value $367.50 Exhibit # 12

i) This ring was recovered from Defendant's person when he was arrested on September 21, 1988 Exhibit # 13

c. From the Fine Jewelry Department - one ring; ladies diamond chip cluster ring, value $114.19 Exhibit # 14

d. From the Women's Department - three articles of clothing, value $130.20 Exhibit # 15

e. From the Infant Department - infant furniture and clothes, value $64.83 Exhibit # 16

8. That on September 16, 1988, Jeanetta Washington was the salesperson at the J.C. Penney's Fine Jewelry Department. Ms. Washington requested that the Defendant complete a client card. The Defendant provided false information with the name and address of Kevin Jackson of 4552 Finney Avenue. The Defendant also provided a false address of 1951 Walnut Avenue for a diamond certificate. Exhibit # 17 and 18.

9. Jeanetta Washington's J.C. Penney's business card was found in the Defendant's wallet when he was arrested on September 21, 1988. Exhibit # 19

10. That there had been no other activity on Florence Lacs' J.C. Penney's credit card between August 1988 and September 16, 1988.

11. That the Defendant was in possession of Florence Lacs' Sears credit card, account # 5485648590394 on September 16, 1988, without Florence Lacs' permission.

12. That on September 16, 1988, Friday, the Defendant, along with Geraldine Armstrong, purchased the following items from the Sears Department Store, located at the Columbia Mall. Payment for these items was made by using Florence Lacs' Sears credit card without her permission:

a. Casual shoes value $49.34 Exhibit # 20

b. Jeans value $20.99 Exhibit # 21

c. Three articles of clothing value $53.52 Exhibit # 22

d. 14k Gold chain 7" value $31.49 Exhibit # 23

e. 14k Gold chain value $83.99 Exhibit # 24

f. Two travel bags value $46.18 Exhibit # 25

g. Infants 2-piece set value $11.54 Exhibit # 26

13. That there had been no other activity on Florence Lacs'

Sears credit card between August 1988 and September 16, 1988.

14. That there was no activity on Florence Lacs' Hecht's, J.C. Penney's or Sears credit card after September 16, 1988.

15. That Joan Murley, Document Examiner for Baltimore County Police Department examined all of the signatures on all sixteen sales receipts from Hecht's, Penney's, and Sears and stated in her expert conclusion that Geraldine Armstrong prepared the "Florence G. Lacs" signatures on all of the sales receipts.

16. That, Det. Tim Ostendarp, Fingerprint Examiner for Baltimore County Police Department, conducted comparison examination of a Latent fingerprint found on the front of a Sears sales receipt (Total $53.52) and found the characteristics to be identical to inked fingerprints of Geraldine Armstrong.

/s/ Kevin Wiggins	/s/ S. Ann Brobst
KEVIN WIGGINS	S. ANN BROBST
Defendant	Assistant State's Attorney
/s/ Carl Schlaich	/s/ Robin S. Coffin
CARL SCHLAICH	ROBIN S. COFFIN
Assistant Public Defender	Assistant State's Attorney
/s/ Michelle Nethercott	Aug. 1, 1989
MICHELLE NETHERCOTT	DATE
Assistant Public Defender	

In the Circuit Court for Baltimore County

State of Maryland
v. Case No. 88-CR-5464
Kevin Wiggins

Reporter's Official Transcript of Proceedings
Monday, October 16, 1989
Towson, Maryland

Before:
Honorable J. William Hinkel, Judge and a Jury

* * * *

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[WITNESS: DR. MARGARITA KORELL]
20 BY MS. BROBST:
21 Q Dr. Korell, how long have you been
22 employed with the Office of the Chief Medical
23 Examiner in Baltimore?
24 A I've been an assistant since October,
25 1978, and before that I was two years as an

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1 associate pathologist, a training-type job at the
2 same place.
3 Q Can you describe for the members of the
4 jury your educational background?
5 A I became a physician at the University
6 of Buenos Aires, Argentina. And I did a
7 rotating-type internship at Fordham Hospital in the
8 Bronx, New York. Then I had training in

hospital-type pathology, that's anatomical and clinical pathology, at Fordham and Misericordia M-I-S-E-R-I-C-O-R-D-I-A, Hospital, also the Bronx, New York.
Then I decided to go into forensic pathology and for one year I went to the Coroner's Office in Pittsburgh, Pennsylvania for training.
And then I came to Baltimore.
Q Are you board certified in the field?
A No, ma'am.
Q And are you a member of any organizations dealing with your speciality?
A With path -- no. In medicine generally, the American Medical Association, and I'm licensed to practice medicine in this state.
Q And what degrees do you have?
A M.D.

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A medical Doctor Degree?
A Yes, sir. Yes, ma'am.
Q Now, what do you do down at the Medical Examiner's Office? What are your duties?
A My duties are to determine the cause of death in people who have died suddenly, unexpectedly, violently, like in a homicide, suicide accident, or in people who have died suddenly while not under the care of a physician. Now, this is done by doing an external examination of the body to determine if there are any wounds and if there are any, where they are located. Then through an internal examination we determine the extent of any wounds or diseases inside the body.

At that time, also, we retrieve, we could retrieve evidence like in the gunshot wound, maybe a bullet. Also, we retrieve body fluids for toxicological analysis. All this compiled, then, in an autopsy report.
Q How many autopsies could you estimate have you performed?
A I think over 3,000.
Q And have you ever qualified to testify as an expert in forensic pathology in any courts?
A Yes, ma'am.

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Q And what courts are those?
A I have been called to almost every court in every county in this state, in Federal Court in Baltimore, and Washington, and Danville, Illinois, and called in Orlando, Florida, and also Federal Court in Brooklyn, New York.
Q And how many times have you testified in court as an expert in forensic pathology, if you know?
A By now it's over 150 or so times.
Q Have you ever qualified in Baltimore County Circuit Court?
A Oh, yes, several times.
Q Your Honor, I would be offering this witness as an expert in the field of forensic pathology.
MR. SCHLAICH: No objection.
THE COURT: I'll accept her.
BY MS. BROBST:
Q Doctor, I'm going to show you that which

has been marked as State's Exhibit Number 36. Can you look at that and identify it for the members of the jury?
A Yes. This is a notarized copy of the autopsy on Florence Lacs. The autopsy number is

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882398.
Q Did you perform that autopsy, Doctor?
A Yes, ma'am.
Q And what date did you perform that autopsy?
A That was done on September 18th, 1988.
Q And can you tell us what you did in this case when you received the body of Florence Lacs?
A We first photographed her the way she was received in our office. Then we did, I did an external examination of the body. Then an internal examination through a Y-shaped incision. That means going through the chest and abdomen. And then we examined organ by organ and included in it was also examination of the head.
Q And are you familiar with the term "defensive injuries?"
A Yes, ma'am.
Q Did you find any of those when you performed this autopsy?
A I found a contusion on the dorsum of the left hand. It's a bruise. Now, defensive-type injuries, again, are injuries that occur while somebody tries to fend off an oncoming weapon. So that's the only one, the injury that would qualify

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for that.
Q And was that injury consistent with the defensive-type injury?
A It's really only, it's a contusion, a bruise. It doesn't have a pattern to it. It's a wound that could have occurred while she tried to fend off or fight off somebody or something.
Q Now, when you performed her autopsy, did you have occasion to familiarize yourself with the circumstances under which Mrs. Lacs' body was found?
A Yes, ma'am.
Q And did you form an opinion within a reasonable degree of medical certainty as to the cause of her death?
A Yes, ma'am.
Q On what did you base that opinion?
A I based my opinion in that on the way she was found -- again, she was found submerged in water -- and also the circumstances surrounding the way her place looked, and then through an internal examination, mainly the appearance of the lungs. Based on that and the appearance of the heart, also.
Q And using these considerations, keeping these considerations in mind, did you form an opinion within a reasonable degree of medical

Page 9

certainty, as to the cause of death in this case?
A Yea, ma'am.
Q And what was your conclusion?
A My conclusion was that Miss Lacs died of

drowning and with contributory arteriosclerotic cardiovascular disease.
Q What does that mean?
A Arteriosclerotic cardiovascular disease, essentially in lay terms, means hardening of the arteries. In this case, the coronary arteries, the arteries that supply blood to the heart, were very much hardened and they only had, two of them had only pinpoint lumen where the blood could go through it.
Q And did you form an opinion within a reasonable degree of medical certainty as to the manner of death in this case?
A Yes, ma'am.
Q And what was your conclusion with respect to the manner of death?
A Based on the way she was found submerged in the bath tub and the appearance of the surrounding area, and based on the autopsy, the manner of death, my opinion was homicide.
Q Now, could you please explain to the

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members of the jury how one goes about trying to ascertain a time of death?
A Well, the time of death is, we check for the time of death. We check the rigor mortis, R-I-G-O-R, M-O-R-T-I-S. That's the stiffening that occurs after death.
There are certain chemical changes in the muscles that make the joints and every body part stiffen. Now, to be complete, it takes several, it starts right away but it takes several hours to

settle completely.
Another parameter is the livor mortis, L-I-V-O-R, M-O-R-T-I-S. That's the settling of the blood after death on the dependent parts of the body.
Now, settling of the blood is that the blood settles in the blood vessels under the skin. That starts right away. It takes several hours to show up. And at one point, at the beginning, livor mortis is not mixed. That means when pressure is applied at the site where there is bluish discoloration, settling of the blood, the area blanches. After several hours, no matter how much one presses on the skin, the skin stays still blue because the blood has settled completely in the

Page 11

blood vessels and also broken up small blood vessels and gone into the skin. So all this takes several hours.
Of course, if the body is relatively fresh, there is also the temperature of the body to be considered. That's very valuable. Now, for all these things, rigor mortis, temperature, livor mortis, all these processes take several hours. They are very valuable.
I mean, what happened before, I mean, the activity at this time of the person, of the victim before he or she died, the ambient temperature, if there are any currents of air in the place where the person was found, all these are several valuables to consider in the time of death of somebody. And again, where the person was found, if in water or

17 outside in the dry area.
18 Q Okay. So are there specific
19 considerations that are attendant to a drowning
20 situation?
21 A Yes.
22 Q Okay. And what would that be?
23 A Well, drowning, first of all, that
24 somebody is submerged in water, including the whole
25 face or part of the face. Then at autopsy, a

Page 12

1 consideration is the boggy appearance of the lungs,
2 B-O-G-G-Y. That's very wet, soggy lungs that by
3 autopsy almost appear to stand by themselves. There
4 are really no specific things to find in a drowning;
5 mainly is the circumstances.
6 Q And are there any other reasons why
7 one's lungs may be boggy in appearance?
8 A You can get wet lungs in people who have
9 died or in heart failure, people who have had head
10 injuries or any other injuries. Pulmonary edema,
11 that means wet lungs. It's also rather
12 non-specific.
13 Now, in drowning, the lungs appear a
14 little bit more soggy and they sort of stand by
15 themselves, something that you wouldn't generally
16 see in people who died with pulmonary edema due to
17 other causes. But again, that's not 100%.
18 Q How about the lungs in this case, the
19 lungs of Mrs. Lacs?
20 A The lungs of Mrs. Lacs, they had that
21 typical boggy appearance.
22 Q Typical of what?

23 A Drowning.
24 Q Now, in the case of Mrs. Lacs, was it
25 possible to pinpoint a time of death?

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1 A Well, time of death never can be
2 pinpointed unless somebody dies right in front of
3 somebody else. Again, she was found in water. In
4 my opinion, it was cold water. So there are -- and
5 based on that, somebody in cold water is better
6 preserved, you know, based on that the water is
7 cold. In my opinion, it was cold because she did
8 not look like she was scalded in any way.
9 Based on that, and at the time she was
10 found she was still stiff, according to the County
11 Medical Examiner who first saw her. So in my
12 opinion, that that could have occurred --
13 MR. SCHLAICH: Objection.
14 THE COURT: Sustained. Wait for another
15 question, please.
16 BY MS. BROBST:
17 Q Did you form an opinion within a
18 reasonable degree of medical certainty, based on the
19 investigation you did of this case, as to a range of
20 the time of death?
21 A Yeah. Based on all the things I said
22 before, I estimated that Miss Lacs could have died
23 24 or 48 hours before she was found.
24 Q Okay. Now, are you familiar with the
25 term, epidermal slippage or skin slippage?

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A Skin slippage, yes.
Q Okay. Did you find any of that in this case?
A No, ma'am.
Q What is skin slippage?
A Skin slippage is, in general, is noted in people who are decomposing and the upper layers of the skin become detached from the rest. And a very, I mean, a very drastic example is that the whole, the entire skin of the hand, for example, can slip off like a glove. That's skin slippage.
Q And you refer to the fact that you found no evidence of scalding. Could you describe under what circumstances you would find evidence of that?
A We can find evidence of scalding, that's immersion in hot water -- that's the definition, more or less -- when somebody is immersed in hot water.
Q If I could have the Court's indulgence for one minute.
Can you please tell the members of the jury how much it takes livor to become fixed?
A Again, livor becomes fixed, considering an ambient temperature of 70 degrees or so, without

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being in water, and again, it takes several hours. It can be from eight to twelve.
Q Thank you, Doctor. I have no further questions. Your witness.

CROSS EXAMINATION
BY MR. SCHLAICH:
Q Court's indulgence, please, Your Honor.
Dr. Korell, Mrs. Lacs suffered from severe heart disease, correct?
A Yes, sir.
Q And you were aware that she had Digoxin prescribed for that?
A I don't remember if she was --
Q Do you remember if the homicide detective brought you the bottles to show you?
A Yeah. I don't recall about Digoxin.
Q You did a screening for those types of medications that would have shown if it was in her system, correct?
A Digoxin, you have to ask for a separate test for that.
Q I see. So the work you did in this autopsy would not have revealed whether it was present or not?
A Not really.

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Q Now, Miss Lacs weighed how much.
A 143 pounds.
Q And could you tell us, please, in your opinion, what you would expect the normal weight of the lungs to be in an adult female of 143 pounds?
A Normally, between 300 and 350 or so, each.
Q Each?
A Yeah.
Q Now, you found Miss Lacs' right lung to

11 weigh 480 and her left 450, correct?
12 A Yeah.
13 Q In fact, those numbers are not that
14 severely high for a drowning case, are they?
15 A It's more the appearance. The lungs
16 look wet and when you press them you get foamy fluid
17 squishing out. Also, they have, they are soggy, and
18 since they can sort of stand up by themselves, they
19 seem like they are hyperaerated. So they don't need
20 to be astronomically high in weight. Appearance
21 more than anything else.
22 Q Let me go back to what I was asking.
23 Those weights are not extremely high for --
24 A Extremely high, no.
25 Q In fact, it would not be unusual in a

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1 known drowning case, say where a body was pulled out
2 of the Bay or something, for the lung to weigh
3 almost twice the norm you just gave us, right?
4 A Let me recall some of the drownings.
5 Yes, they can be higher. They can be the same
6 level. More than anything else, it's the appearance
7 of them.
8 Q You would agree, though, that the
9 appearance of the lungs in Miss Lacs' case could be
10 or actually is something you would see in a case of
11 a person who had died of severe heart disease,
12 correct?
13 A If she hadn't been found the way she was
14 found, yes.
15 Q Okay. If she had not been found
16 submerged, had been found on the floor, and you look

17 at her lungs, you would have said she died of heart
18 disease?
19 A On the other hand, like I said, these
20 lungs were more, were consistent with, more
21 consistent with drowning because of the way, that
22 boggy appearance that you really may not see in any
23 other condition. They sort of stand up by
24 themselves. Again, it's not 100% specific.
25 Q Okay. Well, the reason I'm asking about

Page 18

1 the heart disease possibility is because heart
2 disease causes pulmonary edema as you said, correct?
3 A Certainly.
4 Q Pulmonary edema means your lungs fill up
5 with fluid?
6 A Yes.
7 Q Other parts of your body do, too, like
8 your legs?
9 A Legs, yes.
10 Q In fact, in Miss Lacs' case, you found
11 the edema in her legs, right?
12 A Yeah. Pitting edema.
13 Q Court's indulgence. Doctor, you talked
14 about the fact that this water was cold because you
15 found no scalding, is that right?
16 A Yes, sir.
17 Q Okay. Now, you're talking about the
18 reddening or even blisters you would get if you
19 were, if you had your hand stuck in hot water?
20 A Yes.
21 Q What temperature of water does it take
22 to cause that scalding?

23 A Scalding, very hot type water, yes.
24 Q We're talking 130 degrees or so, right?
25 A 130, yes.

Page 19

1 Q So when you say cold water, water of
2 maybe 100 degrees you would consider cold?
3 A No. I still consider that rather warm.
4 Q Okay. But it wouldn't scald the body?
5 A But it still would accelerate the
6 decomposition, and still 100 degrees is warm.
7 Q Okay. So what --
8 A Anything that's less than lukewarm, I
9 would call cold.
10 Q Okay. Could you give us a temperature
11 for what you would call cold?
12 A Cold, less than lukewarm.
13 Q Room temperature water, room temperature
14 -- I'm sorry. You use the term "ambient
15 temperature", is that right?
16 A Yes.
17 Q That is sort of equated with inside, to
18 the room temperature, right?
19 A Well, I mean temperature, you know, to
20 establish how many hours you get rigor mortis, livor
21 mortis. These standards are for 70 degrees in air.
22 Q By standard, you mean if you opened the
23 textbook and it said rigor starts here and ends
24 here, that would be at 70 degrees, right?
25 A Yeah. Yeah. But in air.

Page 20

1 Q Okay.
2 A Temperature.
3 Q Now, you said that you had reviewed the
4 notes of the County Medical Examiner, is that
5 correct?
6 A Yes, sir. The County Medical Examiner
7 sent in. That's regularly done with every deputy.
8 He sends in with a body an investigation report,
9 whatever he has available at the time he's involved
10 with the case.
11 Q And you read his report?
12 A Yeah.
13 Q And you are aware from his report that
14 when he saw the body at approximately 9 p.m. on
15 Saturday, the body was half in the water and half
16 out of the water, is that right?
17 A Here it says half submerged in water,
18 yes.
19 Q Okay. And Dr. Felsenberg, in his
20 report, does not make any note of any extremes in
21 either the temperature of that water or the
22 temperature of the air, correct?
23 A No, he doesn't mention anything about
24 it.
25 Q Okay. And if the person was to do good

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1 on-site medical examiner work, if there were an
2 extreme in temperature, that would be something you
3 would put down, right?
4 A Yes.

Q Now, you've given here today an estimate
of the range of Miss Lacs' time of death of 24 to 48
hours, is that correct?
A Yes, sir.
Q And what time are you dating that back
from? When she was found by the paramedics?
A When she was found by, based on what Dr.
Felsenberg saw, rigor, at the time he saw the body.
That was on the 17th.
Q Okay.
A Late in the evening.
Q So you are saying 24 to 48 hours before
9 p.m. on Saturday?
A Right.
Q So going back, now, from 9 p.m. on
Saturday, you would say that Miss Lacs died some
time after 9 p.m. on Thursday and sometime before 9
p.m. on Friday, correct?
A What day was the 17th?
Q Okay. Saturday was the 17th. So 48
hours back, would you agree, would be 9 p.m., the

Page 22

15th?
A Right.
Q Okay. So sometime after?
A Approximately, yeah.
Q Sometime after 9 p.m. on Thursday and
ending at 9 p.m. on Friday is the range you're
giving, is that correct?
A Yes.
Q Doctor, when you do an autopsy and are
trying to establish a time of death, isn't it

correct that it would be important to you to know
when, to know of reports of when the person had last
been seen alive?
A Certainly.
Q Okay. The homicide detectives in this
case did not tell you that anybody had seen Miss
Lacs alive or had talked to her alive on Friday, the
16th, correct?
A I don't recall. I don't remember that
part.
Q If you were told that someone says they
talked to her at approximately 10 to 10:30 on Friday
morning, 10:30 a.m., that would be consistent with
the range of time you've given us for her death,
correct?

Page 23

A 10:30 in the morning.
Q Friday.
A Friday. She's found 9 p.m. Saturday.
That's between, yeah.
Q That's between?
A The 24 and 48 hours, yeah.
Q Court's indulgence.
Could I have this marked as defense
exhibit, please?
THE CLERK: That's 4.
Q Doctor, let me direct your attention to
this document that's now been marked as Defendant's
Exhibit 4. Do you recognize that?
A Yes.
Q What is that?
A It's a death certificate, copy of a

17 death certificate.
18 Q Of?
19 A Florence Lacs.
20 Q And that's your signature at the bottom?
21 A Yes, ma'am -- sir.
22 Q And when did you sign that?
23 A That was signed at, first the case was
24 left pending. So I signed it at that time without
25 anything on the certificate, cause and manner of

Page 24

1 death.
2 Q Okay. When did you do that? When did
3 you?
4 A I signed it the day I did the autopsy.
5 Q Which would be the 18th of September,
6 1988.
7 A Yes. And then the cause and manner of
8 death was filled in later after we sent a letter to
9 the Health Department.
10 Q Okay. In fact, you made notations of
11 the fact that some things were filled in later up on
12 the top, and dated December the 6th, is that
13 correct.
14 A Yes. I think the Health Department does
15 that after they receive our pending letter.
16 Q Oh, I see. And one of the things you
17 left pending in September when you did the autopsy
18 was the cause of death, correct?
19 A Yes, sir.
20 Q Okay. Now, let me ask you something
21 else. You have down here that, when you did fill it
22 in sometime later, you said the cause of death was

23 drowning?
24 A Yeah.
25 Q The contributing cause was

Page 25

1 arteriosclerotic cardiovascular disease. What does
2 "contributing cause" mean?
3 A That it was significant enough to be put
4 on the death certificate as part of the death
5 certificate.
6 Q Okay. So it's significant enough that
7 it could be an alternate diagnosis? Is that why
8 it's significant?
9 A Alternate? I don't know what you mean.
10 Q Well, you put it on there because it
11 could be 50% that she drowned or 50% that she died
12 from heart disease, is that right?
13 A No. Contributing to death, it doesn't
14 mean, it doesn't give a percentage as such. It's
15 there. It's very significant and we put it on the
16 death certificate because that's what she had.
17 Q Okay. In your autopsy, you used the
18 term "underlying." Is that the same as
19 contributing or is that different?
20 A Underlying? Again, here I said died of
21 drowning with contributory arteriosclerotic
22 cardiovascular disease. Again, yeah, in the
23 opinion, it says she had severe coronary artery
24 disease, hardening of the --
25 THE COURT: Slow down, Doctor.

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A Sorry. She had severe coronary artery disease, brackets, hardening of the arteries, which combined with the stress of the situation contributed to her death. I don't see the word "underlying" here.
Q Okay. I made a mistake. Actually, underlying's checked on the death certificate. What does that mean? It says external cause was underlying.
A It should have been put in this second.
Q Should have been contributing?
THE COURT: Doctor, speak into the mike so the jury can hear you.
A Yes. On the death certificate, in a little part called 21-A, it says "external cause was." There are two brackets, underlying or contributing cause of death. It should have been -- there is an X on underlying, but it should have been put on contributing.
Q Just a typo, then?
A I think, yes.
Q Okay. One other thing. Item 2-A up in the right-hand corner is not, is one of the things you filled in on September the 18th when you did the autopsy, correct?

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A Usually, if a case is pending, we shouldn't put it because it's pending. Also, that part, I don't remember when that was put in.
Q Okay. When the other things are filled

in note does not indicate 2-A in the list as having been filled in later, correct?
A Yeah. It says Part 2 only. 18-A, Part 2 and 21-A, yes.
Q Okay. But not item 2-A in the first part?
A And this, again, is filled in by the Health Department.
Q So at some point during this procedure, you marked that Item 2-A, estimated time of death of 9/16/88, correct?
A Right. I'm sorry.
Q That's okay. I would move to introduce this into evidence as Defense Exhibit 4.
MS. BROBST: No objection.
(Defendant's Exhibit No. 4, death certificate, was entered in evidence.)
MR. SCHLAICH: No further questions, Your Honor.
RE-DIRECT EXAMINATION
BY MS. BROBST:

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Q You testified on cross as to certain lung weights and you said 450, 480, but you never said what.
A Grams. I'm sorry.
Q Grams. Okay. And you also testified that there's a difference between bodies found in air and bodies found in water?
A Certainly.
Q Can you tell the members of the jury what effect water has on a deceased?

11 A Again, it depends on the temperature of
12 the water. If the water is cold, the body stays
13 better preserved. The rigor mortis, livor mortis,
14 all that is extended as long as the body is in cool
15 or cold water.
16 So we see people who have drowned in
17 rivers or in oceans. They stay quite well preserved
18 for quite a while, until they come out of the air,
19 then they decompose fast.
20 So essentially cold water preserves the
21 body better.
22 Q And by cool or cold, you mean anything
23 cooler than lukewarm?
24 A Yes.
25 Q Now, you stated that it is your opinion

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1 that Mrs. Lacs had been deceased for 24 to 48 hours
2 prior to her having been found, is that correct?
3 A Yes, ma'am.
4 Q If livor and rigor were actually set at
5 4:00 in the afternoon on the 17th, is that the time
6 from which your estimate would run?
7 MR. SCHLAICH: Objection.
8 THE COURT: Overruled. Do you have an
9 opinion with respect to that?
10 A Yes. If rigor and livor, if somebody
11 can -- I only go by what Dr. Felsenberg saw at 9. I
12 don't know if somebody saw her already stiff at 4
13 and with livor at 4. Yes, then you could count
14 backwards like that, yes.
15 Q Okay. And when you refer to livor, are
16 you referring to a settling of the blood in the part

17 of the body which is down?
18 A Yes.
19 Q Now, when you performed your autopsy at
20 the Medical Examiner's Office, did you notice where
21 livor was present?
22 A Yes.
23 Q And where was it?
24 A It was, I have in here written as
25 lividity, livor was present and fixed on the right

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1 posterior surface of the body except in areas
2 exposed to pressure. That's essentially the back
3 and right side of the back.
4 Q Okay. Your Honor, at this time I would
5 move to introduce into evidence the autopsy report
6 referred to during testimony.
7 MR. SCHLAICH: I have one objection. May
8 we approach the bench, please?
9 THE COURT: Yes.
10 (Counsel and defendant approached the
11 bench and the following ensued:)
12 MR. SCHLAICH: The doctor last testified
13 very specifically today that there was only one
14 defensive-type injury and in here she states that
15 there were two, one being a small hemorrhage in the
16 neck. That was testified about extensively during
17 the trial phase. I would ask that that hemorrhage
18 part be stricken out of here before it's
19 introduced.
20 MS. BROBST: This is the true autopsy
21 report, she said, when asked on direct, she didn't
22 recall but the one. That doesn't make the official

23 autopsy report inadmissible, because she didn't
24 testify, she wasn't specifically questioned.
25 Refreshes her recollection. I don't think that

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1 makes it inadmissible, colors her testimony.
2 MR. SCHLAICH: Well, it's an opinion of
3 the expert that I can't cross examine her about
4 unless I bring it out. And I don't see a reason why
5 the defense should bring out something that could be
6 construed more damaging, to be damaging. If she
7 hasn't testified to it on the State's questions,
8 then that shouldn't be slipped in in a back door
9 method.
10 THE COURT: That's not slipping it in a
11 back door method. Overruled.
12 (Counsel and defendant returned to trial
13 tables.)
14 THE COURT: State's Exhibit 36.
15 (State's Exhibit No. 36, autopsy report,
16 was entered in evidence.)
17 MS. BROBST: I have nothing further.
18 THE COURT: Anything else further, Mr.
19 Schlaich?
20 RE-CROSS EXAMINATION
21 BY MR. SCHLAICH:
22 Q Dr. Korell, the State's Attorney asked
23 you a theoretical question about what if you knew
24 things about when Miss Lacs was actually found at
25 4:00.

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1 A Yes.
2 Q You don't know anything about what she
3 was like when she was found at 4:00, correct?
4 A No, not really.
5 Q Okay. Now, one of the things you've
6 based your time range on is that Dr. Felsenberg
7 found rigor to be present at 9 p.m., correct?
8 A Yes, sir.
9 Q Okay. If you knew that rigor was
10 present at 4 p.m., in fact, that would shorten your
11 range of time of death rather than lengthen it,
12 correct, because rigor peaks at a certain point in
13 time so that if she's found stiff at 4:00, that may,
14 in fact, be the peak?
15 A But then she was, if I may say, she was
16 found stiff at 9, also. Everything is a range of
17 several hours. So I mean, I don't, five hours
18 different, yeah.
19 Q Okay. So really, you don't know
20 anything about 4:00? You can't really answer the
21 question, right?
22 A She could still be -- she was very much
23 stiff at 9:00. She could have been stiff at 4,
24 also, yes.

* * * *

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* * * *

15 BY MS. BROBST: [WITNESS: DR. ANN DIXON]
16 Dr. Dixon, how are you employed?
17 I'm Deputy Chief Medical Examiner for
18 the State of Maryland.
19 Q I think you may have to move that mike

20 up a little bit. I'm not sure the jury can hear
21 you.
22 THE COURT: Speak as loudly as you can.
23 Would you state that again?
24 A I'm Deputy Chief Medical Examiner for
25 the State of Maryland.

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1 Q And how long have you been so employed?
2 A As Deputy Chief, two and a half years.
3 I've been at the Medical Examiner's Office for
4 almost 15 years.
5 Q And what were your duties before you
6 were Deputy Chief Medical Examiner?
7 A I was an Assistant Medical Examiner.
8 Basically, my duties involved performing post mortem
9 examinations on deceased individuals whose death
10 brought them within the jurisdiction of the medical
11 examiner system.
12 Q Could you describe for the members of
13 the jury your educational background?
14 A I received my medical education at the
15 University of Edinburgh, Scotland. I graduated from
16 that institution in 1966. Thereafter, I spent one
17 year as an intern in general medicine and surgery,
18 and in 1967 I started training in pathology.
19 There are two main branches of pathology.
20 One is anatomic, and that deals with the tissues
21 that are removed during surgery, cytology, and also
22 the performance of post mortem examinations. The
23 other main branch of pathology is clinical
24 pathology, and that involves all of the lab tests
25 that are performed.

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1 I trained in both areas of pathology for
2 three years in Edinburgh. Then in 1970, I came over
3 to this country and continued with my training in
4 the Wake -- excuse me -- the Bowman Gray School of
5 Medicine of the Wake Forest University, which was
6 affiliated with the North Carolina Baptist Hospitals
7 in Winston-Salem, North Carolina.
8 I spent three more years training and I
9 stayed on for an extra year as a lecturer at the
10 medical school, having completed my training.
11 Q And did you specialize at that point?
12 A At that point, I was doing both anatomic
13 and clinical. I took the speciality examinations
14 for board certification in both areas and passed
15 those. And in 1974, I came up to Baltimore and
16 commenced here as an Assistant Medical Examiner.
17 Q What degrees do you hold in your field?
18 A I just have an M.D. The certifications
19 are not degrees as such. I am also certified in
20 forensic pathology, which is what I have been
21 practicing for the past 15 years.
22 Q Are you licensed to practice medicine in
23 Maryland?
24 A Yes, I am.
25 Q Are you a member of any organizations in

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1 the medical field?
2 A No, not really.
3 Q Now, can you estimate for us the number
4 of autopsies that you perform in your duties as

Assistant Medical Examiner and Deputy Medical Examiner?
A Somewhere in the region of 7,000, give or take a few.
Q And have you ever been qualified to testify as an expert in the field of forensic pathology in any court?
A Yes, I have.
Q How many occasions, approximately?
A Approximately 270 occasions.
Q And in what courts?
A Most of the county courts in Maryland. I think there are two that I haven't had to testify in. I've also testified in Washington, D.C. and Wilmington, Delaware.
Q Your Honor, at this point I will be offering Dr. Dixon as an expert in the field of forensic pathology.
MR. SCHLAICH: No objection.
THE COURT: Accepted.
BY MS. BROBST:

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Q Thank you. Dr. Dixon, pursuant to your duties as Deputy Chief Medical Examiner for the State of Maryland, did you have occasion to consult with Dr. Margarita Korell about an autopsy which she performed on September 18th, 1988.
A Yes, I did.
Q And if would you look at that document in front of you, it's been marked as State's Exhibit Number 36. Could you tell me whether you are familiar with that document?

A Yes, I am.
Q And have you reviewed that before today?
A Today?
Q Yes.
A Not today, I haven't reviewed it. I have reviewed it prior to today.
Q On a previous occasion?
A Yes.
Q Okay. Are you familiar with the autopsy report in the case?
A Yes.
Q And based on that report and your experience in the field of forensic pathology, were you able to determine within a reasonable degree of medical certainty what the cause of death was in

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Mrs. Lacs' case?
A Yes.
Q And what did you base your opinion on?
A The opinion was based upon the circumstances under which she was discovered and the general autopsy findings, which basically are non-specific, but there was not a specific, acute anatomic cause of death that one could go to basically. The diagnosis in this case is one, to some extent, by exclusion and also based upon the circumstances and non-specific findings.
Q Okay. And what is your conclusion that you have reached within a reasonable degree of medical certainty as to the cause of Mrs. Lacs' death?
A Mrs. Lacs died as a result of drowning.

17 She also did have hardening of the arteries and this
18 was determined to be a contributing factor in that
19 death.
20 Q Are there any specific -- you say there
21 are non-specific findings. Are there any specific
22 findings which would also cause you to conclude that
23 she died as a result of drowning?
24 A The one finding that is entirely
25 consistent with death due to drowning is the heavy,

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1 wet lungs, which Dr. Korell has described as boggy
2 lungs.
3 Q And that is a specific consistency with
4 drowning?
5 A It is entirely consistent with
6 drowning. In and of itself, it is not
7 pathognomonic. It doesn't say this is the cause of
8 death. But it is entirely consistent with a death
9 by drowning.
10 Q When one is performing an autopsy and
11 attempting to determine a cause of death, are the
12 circumstances under which a body is found
13 traditionally or routinely looked into?
14 A Yes, in our field.
15 Q Right. Now, also, additionally, with
16 reference to your consulting on this case, were you
17 able to ascertain within a reasonable degree of
18 medical certainty a time of death for Mrs. Lacs?
19 A Pinpointing time of death within the
20 ground of reasonable medical certainty is all but
21 impossible. One can determine within realms of
22 probability but not medical certainties.

23 Q And can one determine a range in which
24 someone was actually killed?
25 A Obviously, the broadest range within

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1 which death is noted to have occurred is between the
2 time that an individual is last known alive and when
3 they're found dead. Within that range, one can, by
4 assessing the degree of post mortem changes which
5 have occurred, narrow down that range to something
6 still relatively broad, but one can certainly narrow
7 it down, the range as to time of death.
8 Q All right. You described anatomical
9 changes. What kind of things do you look for?
10 A For the most part, again it depends on,
11 to some extent, how long an individual has probably
12 been dead. In the early phase following death, body
13 temperature can be quite useful. Following that,
14 one also assesses the degree of development of rigor
15 mortis, the stiffening of the muscles which occurs
16 in anyone after death -- not just the degree of
17 stiffening, but whether rigor mortis is fully
18 developed. These changes take place within an
19 average period of time.
20 The other factor that may be of some help
21 in determining time of death is the presence of post
22 mortem lividity, the pooling of the blood, and
23 whether or not the lividity is fixed at the time of
24 examination.
25 There are other factors that may have

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importance in determining time of death. If the individual's daily habits are well-known, then based upon whether the individual is dressed, ready to go out or go to bed, whether there is food in the stomach and the nature of the food, these other factors also may be of help in determining time of death.
Q Okay. Is the environment in which the body is found, does that affect these factors which you've described?
A Yes, the environment is crucial in terms of the post mortem changes and the time it takes for them to develop.
Q A body found in water, does that affect a time of death in an attempt to ascertain a time of death?
A Typically, if a body is found in cold water, the post mortem changes will be slowed down to some extent as opposed to a body found in the, you know, in a room at room temperature.
Q Now, you also testified, you described one of the things that you would look for would be fixed lividity. For the members of the jury, could you describe what you mean by that? What is lividity and when does it becomes fixed?

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A When the heart stops pumping blood throughout the body, which obviously occurs when somebody dies. The heart stops. Blood, like any other fluid, will find its own level by gravity. It

will settle with gravity. And as the blood settles in the tissues, the body takes on this purplish color because of the blood showing through the skin.
As I say, this lividity usually starts to become apparent within two to four hours after death. Sometimes it's little sooner than that. After a period of time, usually not less than eight hours, sometimes a much longer period of time, the pooling of the blood, the lividity will fix in the tissues where it is settled up until about eight hours or so.
If one moves a body, if a body is found face down, and four or five hours after death this individual is found and the body is turned over, placed on the back, then the pooling of blood will change direction and start pooling toward the back. But after a period of eight to twelve hours, the blood is fixed in that location. So that moving the body will not alter the distribution of the lividity.

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Q Okay. And given the example that you've just given, if someone had fixed lividity on their right side, what could you conclude about where they were when lividity became fixed?
A Lying, obviously, lying on their right side for a period of, considerable period of time following death.
Q Okay. Now, were you able to apply these principles which you've described to Mrs. Lacs' situation?

11 A The basic alteration which was assessed
12 apart from lividity was fixed, was the presence or,
13 I should say, absence of rigor mortis in Mrs. Lacs.
14 Q Okay. What do you conclude based on
15 that observation?
16 A Under average conditions, rigor mortis
17 develops over a set period of time. As I say, there
18 are obviously always exceptions. But generally
19 speaking, rigor mortis will be fully developed
20 within 12 to 18 hours. It will usually stay for a
21 period of time and start disappearing somewhere
22 between 24 to 36 hours and will be gone, say, 48
23 hours following death. This is sort of an average
24 temperature environment, average conditions.
25 Q A body found in water would vary from

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1 those figures by virtue of being in water, correct?
2 A The changes would be a little delayed by
3 being in water.
4 Q And are you familiar with a principle --
5 I may be misstating it -- known as skin slippage?
6 A Yes.
7 Q Okay. What's that?
8 A The skin slippage is a phenomenon which
9 occurs when a body starts to decompose and the outer
10 layers of the skin, outer epidermal layers separate
11 from the underlying skin. Fluid accumulates
12 underneath the skin surface and the skin breaks and
13 slides off from the underneath layers of the deeper
14 skin.
15 Q Okay. Was that present in this case?
16 A No.

17 Q Now, based on these principles which
18 you've described and your review of the autopsy
19 which was performed in this case, can you state
20 within a reasonable degree of medical certainty a
21 range of time prior to the autopsy having been
22 performed in which Mrs. Lacs was killed?
23 A A broad range, yes.
24 Q Okay.
25 A I would say that the death occurred at

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1 least 24 hours prior to, actually prior to the
2 examination by the Deputy Medical Examiner at the
3 scene, and it could easily have been 36 to 48 hours
4 or even more, based on the body changes.
5 Q If someone would attempt to testify to a
6 specific period of time, say within four or five
7 hours, is it your opinion that that is possible to
8 do?
9 A No.
10 Q If I could have the Court's indulgence
11 for just a minute.
12 Now, are you considering the fact in this
13 case that the -- well, were you able to conclude
14 within a reasonable degree of medical certainty,
15 based on your observations, the autopsy report and
16 so forth, what the condition of the water was in
17 this case as far as temperature goes?
18 A Based on the condition of the deceased,
19 the water in the bath could not have been hot.
20 Q Okay. And why do you say that?
21 A Because when an individual is in a tub
22 of water at bathing temperature, I don't mean

23 scalding hot, but at a temperature that would be
24 considered comfortable for bathing, if an individual
25 dies in water at such a temperature, then the skin

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1 burns. They look as though they're scalded.
2 The temperature of the water need only be
3 a few degrees warmer than body temperature for these
4 post mortem burns to occur. The fact that there was
5 no such burning on Miss Lacs would indicate that the
6 bath water was cool at most.
7 Q Thank you very much, Doctor. I have no
8 further questions. Your witness.
9 CROSS EXAMINATION
10 BY MR. SCHLAICH:
11 Q Doctor, are you familiar with a doctor
12 named Russell Fisher?
13 A Yes.
14 Q In fact, Russell Fisher was your boss at
15 one point in time, wasn't he?
16 A Yes, he was.
17 Q He was Chief Medical Examiner for the
18 State of Maryland?
19 A That is correct.
20 Q And he wrote one of the leading
21 textbooks on forensic pathology called Medico-Legal
22 Death Investigation, correct?
23 A He did write a book, yes,
24 Q Okay. Well, in fact, in Maryland's
25 M.E.'s office, once upon a time that was called the

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1 bible, wasn't?
2 A When the person who wrote it is your
3 chief, that is your tendency.
4 Q You've got a new chief for the last few
5 years. He doesn't call it the bible any more, is
6 that correct?
7 A That is correct.
8 Q But the time range you gave us for rigor
9 are right out of the doctor's book, Dr. Fisher's
10 book, aren't they?
11 A I have no idea. I haven't read it
12 recently.
13 Q Now, you've testified that one of the
14 things that would be of primary importance to you in
15 determining the range of time of death would be to
16 know when the victim was last known to be alive or
17 reported to be alive by someone, correct?
18 A That was, I was using that in the whole
19 scheme of things. I wasn't necessarily meaning for
20 me that's important.
21 Q That's something you would check if you
22 were trying to figure out a time of death, isn't it?
23 A Well, it's useful to know when they're
24 last seen alive.
25 Q In Miss Lacs' case, you didn't know that

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1 somebody had said that they saw her alive at 10:30
2 on Friday morning?
3 MS. BROBST: Objection.
4 THE COURT: Sustained. That's not the

testimony. Last spoke.
BY MR. SCHLAICH:
Q I'm sorry. Let me correct myself. You were not told that, in Miss Lacs' case, someone said that they spoke with her by telephone at approximately 10:30 a.m. on Friday morning, the 16th of September, correct?
A I was not told that, yes.
Q However, if she were alive at that time on Friday morning, that would be consistent with the range of death you've given us, agreed?
A Probably. I'm trying to work backwards.
Q Let's do that.
A That would be, that would be within 48 hours, certainly.
Q Right. In fact, it's within that range of 24 to 48 from Dr. Felsenberg's examination at 9 p.m. on Saturday?
A Yes.
Q Right. Could I have Exhibit Four,

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please?
Doctor, let me show you what's been introduced as Defense Exhibit Four. Have you ever seen that before?
A Not specifically.
Q Okay. Do you know what it is?
A Yes.
Q What is it?
A This is a certified copy of the death certificate that was issued on Florence Lacs.

Q Okay. And these are things that your Assistant M.E.'s would fill out, is that correct?
A The original, yes.
Q All right. This is direct copy of that original, you would agree?
A This is a copy of the original as put out by our office, with considerably more information added subsequently.
Q Okay. And it's signed by Dr. Korell?
A Yes, it is.
Q Okay. When it was submitted to the State for recordkeeping, she estimated a time of death, the date of death as being Friday, the 16th of September, correct?
A That is what it says, yes.

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Q Now, you said that you were called in to consult with Dr. Korell in this case?
A Dr. Korell consulted me. This wasn't any major event.
Q She did not consult with you until July of 1989, correct?
A I don't remember specifically when it was. But it was around about that time.
Q Okay. It wasn't back in September of 1988 when she did the autopsy?
A No.
Q And isn't it true that she consulted with you in July when she was told that her date of death of 9/16 would be inconsistent with the State's facts in this case?
A I don't recall her putting it in those

17 terms at all.
18 Q Okay. You were present when your boss,
19 Dr. Smialek, made a call to the defense attorneys in
20 this case to tell us about that change, weren't you?
21 A No.
22 Q You weren't present?
23 A No.
24 Q You knew a conversation took place, is
25 that correct?

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1 A No.
2 Q The end result of your conversation or
3 consultation, rather, with Dr. Korell in July was
4 that you pointed out to her she could extend her
5 range back to 48 hours, correct?
6 A Yes. Oh, yes.
7 Q And that's because the body was in cold
8 water, in your opinion?
9 A In cold water and also because of the
10 post mortem changes which had occurred since, time,
11 since death.
12 Q You were aware that Dr. Felsenberg, when
13 he found the body, found it only halfway in this
14 cold water, correct?
15 A I don't know how much of her was under
16 water, quite honestly, when Dr. Felsenberg --
17 Q So you didn't check that?
18 A My impression was that most of it was
19 under water.
20 Q That was your impression. No other
21 questions, Your Honor.

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5 MS. BROBST: Your Honor, I move at this
6 time to introduce State's Exhibit Number 47, the
7 Pre-Sentence Investigation prepared in this case.
8 THE COURT: What exhibit is that?
9 MS. BROBST: 47, Your Honor.
10 THE COURT: What is it?
11 THE CLERK: The P.S.I.
12 THE COURT: The number?
13 THE CLERK: 47.
14 THE COURT: 47.
15 (State's Exhibit No. 47, PSI, was entered
16 in evidence.)

* * * *

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14 BY MS. COFFIN: [WITNESS: ROBERT WEINBERG]
15 Q Mr. Weinberg, in September of 1988,
16 where did you work?
17 A I was a subcontractor with my brother
18 and myself, were painting subcontractors for Clark
19 Manor Apartments in Woodlawn.
20 Q What's your brother's name?
21 A Joseph Weinberg.
22 Q I'm going to direct your attention to
23 September 14th, 1988, which would have been a
24 Wednesday. Did you go to work on Wednesday at the
25 Clark Manor Apartments?

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1 A What was date again, ma'am?
2 Q The 14th.

A Yes. About 10:00 in the morning I came up.
Q When you arrived at the work site, was there anything unusual at that time?
A Nothing unusual. Just that I, I went to find where my brother was at, found him at the apartment that he was already, or the building he was working at, and at that time he stated that he had hired a helper.
Q Did he introduce you to that helper?
A Yes, he did.
Q And who was that helper?
A He said the helper's name was Kevin Wiggins.
Q Do you see that person in court here today?
A This gentleman right here.
Q For the record, the witness has identified the defendant.
Did you work with the defendant that day, on the 14th?
A Yes, I did.
THE COURT: Can you keep your voice up,

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please?
A Sir?
THE COURT: Speak a little bit louder so the jury can hear you.
A Yes. sorry.
BY MS. COFFIN:
Q At that time, did he speak about himself? Did you get to know him?

A Just vaguely. He just said that he was from the area and that was all. You know, that he needed a job.
Q And what were his duties in reference to what you were going to be doing?
A Just anything that we needed done. I took him with me that particular day to help install ceilings and in furnace rooms, dry wall ceilings in furnace rooms. And he was to help us touch up painting and carry around materials. Whatever we had to do.
Q Now, directing your attention to September 15th, 1988, which would have been Thursday, did you report to work on Thursday?
A Yes, I did.
Q And did Kevin Wiggins also report to work?

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A Yes. Yes, he did.
Q What was the work you were going to be doing on Thursday?
A Okay. We were, at that date, we were at 1951 Woodlawn Drive, Apartment F, which was a vacant apartment. We were touching, what you call touching up the apartment, getting it ready for a move in, new move in.
My brother had already started the apartment, was just about completed, and that is where myself and Mr. Wiggins ended up in that morning, to touch up that apartment, for work for the apartments.
Q How long did you say you worked in the

15 apartment?
16 A A couple hours, maybe.
17 Q On Thursday, in the morning, when you
18 were preparing to go to work, did there come a time
19 when anything happened as you were in the parking
20 lot?
21 A Yes. We were, myself and Mr. Wiggins
22 were out near my brother's truck or our work truck
23 and I had instructed Kenneth to, Kevin, rather --
24 I'm sorry -- to straighten up the truck, at which
25 time some lady from the building called over to,

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1 apparently to us, which I did not hear, Mr. Wiggins
2 heard, and directed my attention to it and said that
3 this lady apparently must be speaking to us.
4 When I looked over, I asked if she was
5 talking to me and she said yes. She was, you know,
6 calling from her window. She asked me if I was
7 blocking her car so that, you know, she couldn't get
8 out, or if she could get out, was my truck blocking
9 the car. I said no at that time and that was about
10 it.
11 Q Did she identify the car that she was --
12 A I asked her which car. It was only one
13 car there. It was a little red car. I don't know
14 what the type, make or model car it was.
15 Q Did you come to find out who that lady
16 was at a later time?
17 A I don't recall her name but I recall
18 what, you know, I recall what happened to her, yes.
19 I mean, reading about it in the paper, newspaper.
20 Q What happened to her?

21 MR. SCHLAICH: Objection.
22 THE COURT: Sustained.
23 Q During the course of cleaning out the
24 trucks, you said the dry wall was removed from the
25 truck?

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1 MR. SCHLAICH: Objection.
2 A Yes, ma'am. We were cleaning out my
3 truck which had dry wall pieces in it, yes.
4 Q What did you do next?
5 A I was going back and forth from the,
6 from the apartment, Apartment F, and Kevin was
7 clearing out the truck. He also was going back and
8 forth from the apartment, the vacant apartment where
9 we were working at, bringing materials out and
10 clearing the truck at the same time.
11 Q Was there any time during that day that
12 the defendant was alone in Apartment F?
13 A I couldn't say for sure whether he was
14 alone or not, you know, for any length of time or
15 anything. I'm sure five or ten minutes picking up
16 material, we all were, in and out. So if you wanted
17 to say he was alone for a couple minutes, yeah.
18 Q What time did you stop work on Thursday?
19 A About 4, about 4:30 or so.
20 Q And what happened when you stopped work?
21 A Well, we had cleared out the apartment,
22 did some other various things around the apartment
23 complex, and we went back to the maintenance shop
24 where we all go in the morning and in the evenings
25 to meet with the maintenance manager. And myself,

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my brother, Kevin, my mother used to work there, also, and a few other contractors were back there, at which time I told Mr. Wiggins he could go home for the day, which he did.
Q Approximately what time was that, when you told him he could leave?
A About 4:45 or so.
Q What, if anything, happened next?
A Well, we were sitting around, myself, my brother and the rest of the people who worked on the premises, and about 20 minutes later or so, Mr. Wiggins came back and said that he had removed the dry wall that we had from the side the building and placed it in front of the building.
Q Was that --
A Which was a couple of pieces, two pieces, maybe three foot by four foot apiece. I don't remember the exact size.
Q How much would a piece of a dry wall like that take, weigh?
A How much would it weigh? About 25 to 30 pounds. Maybe 30 pounds.
Q Have you yourself ever moved dry wall of that weight and size?
A Yes.

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Q And approximately how much time does it take to move?
A A couple of minutes, depending on where you're putting it.

Q Had you directed the defendant to move that dry wall?
A No, I did not. Not at that time. I already told him to go home.
Q What did you say to him when he came back and said, I moved the dry wall?
A I asked him why he did it. He just said that he had forgotten to move it from that place to the front of the building and I told him that, you know, that I had released him from work and that I was not going to pay from the time that I had already sent him home from.
Q Then the next day being a Friday, the 16th, did the defendant appear at work on the 16th?
A One of these days, he didn't return. He didn't show up for work. Friday -- what day was that? I'm sorry, ma'am.
Q Friday. That would have been the 16th.
A Yes. He came to work approximately 9, 8:30 a.m.
Q And how long did he stay at work on

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Friday?
A Approximately two hours. It was around 10 a.m., he asked me to use the shop phone, the maintenance shop where we all go. He asked me if he could go home because something was happening, something like an eviction or something. From what I understand, he was being evicted or somebody he knew was being evicted.
Q And did you release him from work?
A Yes, we did.

Q Did he come back at all on Friday?
A No, he didn't.
Q Then Monday, which would have been the 19th?
A He didn't show up for work on the 19th, no.
Q Was he told to appear at work on the 19th?
A Well, yeah. I told him Friday when he had left that if he didn't come back Friday evening, make sure he came back on Monday morning, yes.
Q What happened when he didn't appear?
A Well, when he didn't come back to work Monday, of course my brother and I spoke about it. We needed people that would be coming in, you know,

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on a daily basis. And we decided that when he came back, we were going to tell him that if he couldn't come in after a weekend, then he should not, couldn't work for us.
Q Did there come a time when he ever came back to work?
A Yes. He came back to work about Wednesday or, on 10:30 a.m. on Tuesday, which was the 20th. And at that time my brother and I told him that we didn't need him any longer. That was the end of that.
Q Can you, from the position, this is taking you back to Thursday, which is the 15th -- when the lady called from her apartment and asked you about her car being blocked in, do you know from which apartment she was calling from?

A She was calling from the front apartment. If you were facing in front of the building, 1951 Woodlawn Drive, she would be the very first apartment on the walk-in landing level on the left-hand side.
Q And where is that in location to the apartment you were working on?
A Directly across.
Q And do you remember the address or the

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number of that apartment?
A If the apartment I was working on is F -- I don't -- that is probably B or C. I'm not sure.
Q Can I get State's Exhibit Number 3? I'm going to show you what's been marked as Exhibit Number Two. On this exhibit, can you indicate which apartment she was calling from?
A Yes. Okay. You would come into the entrance, which would be here, she was calling from Apartment C, which would be the very first apartment on the left-hand side when you walk in.
Q Thank you. That's all the questions I have.
MR. SCHLAICH: Court's indulgence for one second.
(Pause.)
CROSS EXAMINATION
BY MS. NETHERCOTT:
Q Mr. Weinberg, you worked as a contractor, is that correct, for the apartment complexes?

23 A Subcontractor.
24 Q A subcontractor?
25 A Yes, ma'am.

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1 Q Okay. When we talk about the apartment
2 complexes, we're talking about a large group of
3 apartments, correct?
4 A Yes, ma'am.
5 Q In fact, they're on both sides of the
6 street, right?
7 A Yes, they are.
8 Q And the maintenance office that you're
9 describing is some distance from the apartment as
10 you've just identified in those pictures, correct?
11 A Across the street and a building down
12 across the street.
13 Q So it takes some time to get from that
14 apartment complex to the maintenance office,
15 correct?
16 A Approximately five minutes.
17 Q Walking or riding?
18 A Walking.
19 Q Okay. Now, you didn't have a key to get
20 into the apartments, right?
21 A No, ma'am.
22 Q And in fact, the people who worked for
23 you didn't have a key, either, correct?
24 A No, ma'am.
25 Q So in fact, Mr. Wiggins wouldn't have a

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1 key, right?
2 A No, ma'am.
3 Q Okay. Mr. Weinberg, this sheet rock
4 that's at issue here, it was, in fact, moved, right?
5 A Yes, it was.
6 Q So he did what he told you he had done,
7 right?
8 A Yes, he did.
9 Q And on Friday, the 16th of September, he
10 showed up at, in fact, he showed up for work early
11 that day, right? I think he showed up at 8:00 that
12 morning?
13 A I have it written down as 8:30 a.m. I
14 can't recall.
15 Q He was there promptly?
16 A He was there promptly, yes.
17 Q Mr. Weinberg, just one last point. I
18 think you testified during your direct examination
19 here that on that Thursday, in September, that you
20 finished up work about 4:30 that day?
21 A Thursday being what date, ma'am?
22 Q Bear with me for a second. The 15th of
23 September. I believe that was your testimony on
24 direct. You could be a few minutes off on that,
25 right?

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1 I could be five minutes either way, one
2 way or the other.
3 Q In fact, you gave a statement to the
4 police back in September, on the 27th?

5 A Um-hum.
6 Q And you indicated a different time at
7 that time, right?
8 A I don't recall exactly what time I
9 indicated. Whatever time it was, it was within four
10 to ten minutes range. I don't, you know, I don't
11 have a time card. We didn't have a time clock.
12 Q Okay. I understand that. So if I were
13 to tell you that you gave a statement, actually you
14 finished up about 4:45 that day, that would probably
15 be correct, right?
16 A It could be, yeah.
17 Q That was something given closer to the
18 incident, right?
19 A Yeah. The day that, yeah. Yeah. 4:45.
20 I do have it here. I'm sorry.

* * * *

In the Circuit Court for Baltimore County

State of Maryland
v. Case No. 88-CR-5464
Kevin Wiggins

Reporter's Official Transcript of Proceedings
Tuesday, October 17, 1989
Towson, Maryland

Before:
Honorable J. William Hinkel, Judge and a Jury

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Page 3

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4 MS. NETHERCOTT: Your Honor, defense would
5 call Chentell Greenwood.

* * * *

19 Q Can you speak up, Chentell, so everybody
20 can hear you? Speak into the microphone.
21 A Chentell Antoinette Greenwood.
22 Q That's better. Thank you. Chentell,
23 how old are you?
24 A Thirteen.
25 Q Where do you live?

Page 4

1 A 1967 Woodlawn Drive. Apartment B.
2 Q Okay. Were you living there back in
3 September of 1988?
4 A Yes. Yes.
5 Q And do you remember back on Thursday,

6 September 15th, 1988?
7 A Yes.
8 Q Do you remember being in the hallway
9 with your friend, Chianti?
10 A Yes, and Shanita.
11 Q And Shanita. Do you remember that?
12 A Yes.
13 Q Do you remember seeing someone you knew
14 as Miss Florence in the hallway that day?
15 A Yes.
16 Q Tell us what she was wearing, if you
17 remember.
18 A A white long sleeve shirt and a red
19 pleated skirt.
20 Q Okay. Did you tell the police officer
21 that on the 17th about that? Do you remember that?
22 A Yes.
23 Q Okay. No further questions.
24 CROSS EXAMINATION
25 BY MS. BROBST:

Page 5

1 Q Chentell, what time of day was it when
2 you saw Miss Florence in the hall with Chianti and
3 Chanita?
4 A About 5 or 5:30.
5 Q 5, 5:30. And it was on Thursday?
6 A Yes.
7 Q Who else did you see in the hallway that
8 day?
9 A Miss Florence and the painter.
10 Whatever.
11 Q I can't hear you. Can you speak up?

12 A The, Miss Florence and the man that
13 walked up.
14 Q Can you describe that man?
15 A He had on gray sweat pants and a white,
16 I think it was long sleeve or short shirt.
17 Q And how tall was he?
18 A About, about 5'3", I don't know.
18 Q I'm sorry. I can't hear you.
20 A About 5'3".
21 Q 5'3"? How tall are you?
22 A I don't know.
23 Q You don't know how tall you are? Would
24 you say he was short or tall or average?
25 A Average.

Page 6

1 Q Average? And how about build? Was he
2 fat or skinny or average?
3 A He was average.
4 Q Okay. Black man or a white man?
5 A Black man.
6 Q Did he say anything?
7 A He said, thank you for watching the
8 sheet rock for me, and she said, I knew wouldn't
9 nobody mess with it.
10 Q Now, did you talk to the police about
11 that?
12 A Yes.
13 Q And did there later come a time when a
14 policeman came and showed you photographs?
15 MR. SCHLAICH: Objection.
16 THE COURT: Sustained.
17 BY MS. BROBST:

18 Q What happened after you heard Ms.
19 Florence and this man talk?
20 A The man went out the door and we all
21 left.
22 Q And what time would that have been?
23 A About 5:40.

* * * *

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[WITNESS: OFFICER GARRETT LEONARD]
1 BY MS. NETHERCOTT:
2 Q Good morning, Officer Leonard.
3 A Good morning, ma'am.
4 Q Officer, you're assigned to Precinct 2,
5 is that correct?
6 A Yes ma'am.
7 Q And that's in the Woodlawn area?
8 A Yes, ma'am.
9 Q Were you stationed there back in
10 September of 1988?
11 A Yes, ma'am.
12 Q Do you recall having occasion to take a
13 missing person report back in September of '88?
14 A Yes, ma'am.
15 Q And do you recall the date?
16 A No, ma'am, not offhand.
17 Q Okay. I'll show you this piece of
18 paper. It's marked Defense Exhibit One. Ask you if
19 you recognize this document.
20 A Yes, ma'am. This is the missing persons
21 report that I filed on September 15th, 1988, or
22 September 17th, 1988.
23 Q And you filled that out, right?
24 A Yes, ma'am.

25 Q How did you have occasion to take that

Page 9

1 report, officer?
2 A Ms. Elizabeth Laine contacted the
3 Baltimore County Police Department in reference to a
4 missing person, Ms. Lacs.
5 Q Okay. Can you tell the Court what is in
6 the block of that report giving a description of the
7 missing person?
8 MS. BROBST: Objection. I'd ask to
9 approach, Your Honor.
10 THE COURT: Okay.
11 (Counsel and defendant approached the
12 bench and the following ensued:)
13 MS. BROBST: Your Honor, that's a hearsay
14 statement made by a witness who has testified and
15 when asked what she told the office with respect to
16 what she last saw the victim wearing, said that she
17 did not remember ever saying that she was wearing a
18 red dress. Therefore, it is not a prior
19 inconsistent statement. She said that she did not
20 remember.
21 THE COURT: Overruled. I'm going to let
22 him ask it.
23 (Counsel and defendant returned to trial
24 tables.)
25 BY MS. NETHERCOTT:

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1 Q Let me just, back up for a second,
2 Officer. Can you tell me what the source was for

the information that's contained in that report?
A It was a combined source of Ms. Laine and I believe it was two or three other ladies who were also, also were co-complainants, if you will. They were all present when I arrived there.
Q Okay. Now, can you read for us the description that is provided with regard to the victim's clothing?
A Yes, ma'am. It says, last seen wearing a red dress.
Q Okay. I have no further questions, Your Honor.

CROSS EXAMINATION

BY MS. BROBST:

Q Officer, you said you spoke to a number of ladies. Were they all in the same place when you arrived?
A Yes, ma'am, they were. That was 6611 Krone Drive.
Q Approximately how many ladies do you think were present, if you recall?
A Including Ms. Laine? There were four others, I believe.

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Q And you say that your report is a compilation of the things that they told to you?
A Yes, ma'am. All of them told me their opinion of what she was wearing last, what color her eyes were, that kind of thing.
Q Okay. And were they all sort of talking at once?
A Pretty much so, yes, ma'am.

Q I assume they were fairly upset?
A They were very concerned, yes, ma'am.
Q And excited?
A Yes, ma'am.

MS. BROBST: No further questions.

THE COURT: Anything else?

RE-DIRECT EXAMINATION

BY MS. NETHERCOTT:

Q Officer Laine, do you recall what these individuals told you regarding the last time they had seen Ms. Lacs?
A The last time that they had seen her, I believe, was on the 15th, which was a Thursday, around 4:00 p.m. It was a Senior Citizens meeting down in the Village, Woodlawn Village.

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MS. NETHERCOTT: Your Honor, I'd move at this time to introduce, I believe it's marked as Defense One.

THE COURT: Defendant's One.

(Defendant's Exhibit No. 1, missing persons report, was entered in evidence.)

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Page 13

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[WITNESS: DR. SILVIA COMPARINI]

BY MS. NETHERCOTT:

Q Dr. Comparini, could you tell us, please, where you are employed?
A I am a Deputy Medical Examiner for the

24 Office of the Chief Medical Examiner in the District
25 of Columbia in Washington, D.C.

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1 Q And whet are your duties as a medical
2 examiner in the District of Columbia?
3 A As a deputy medical examiner, my duties
4 involve the investigation of deaths that fall under
5 the jurisdiction of the medical examiner. That is
6 to say, deaths that occur in a violent fashion, such
7 as homicides or accidental, suicides, or
8 undetermined in the sense that we don't know which
9 of these manner, which of these manners occurred.
10 We also are involved in the natural deaths when
11 these deaths occur in an unattended or unexpected
12 fashion.
13 Q Doctor, could you describe for us,
14 please, your educational background?
15 A I obtained my medical degree from the
16 Catholic University of Chile in 1967 and came to the
17 United States almost immediately for post-graduate
18 training. This consisted of two years of internship
19 as required by the State of California for medical
20 graduates, non-citizens, one of which I did in the
21 State of New York, and the second is Surgical
22 Internship in Highland General Hospital in Oakland,
23 California.
24 I stayed in Highland General Hospital and
25 went into the field of pathology and completed two

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1 years of anatomic pathology training and one year of

2 clinical laboratory pathological training. At this
3 time I did my fourth year of training, transferred
4 to the University of California in San Francisco.
5 That's UCSF.
6 After I completed the four years of
7 required training in the field of pathology, I
8 received an LEAA, Law Enforcement Assistant
9 Administration grant, to do a fifth year of training
10 in the field of pathology, and I did it in the field
11 of forensic pathology.
12 This grant was awarded to me by the
13 College of American Pathologists and I did this year
14 of training in the Office of the Chief Medical
15 Examiner in Manhattan, in New York City.
16 Q Doctor, are you licensed to practice
17 medicine?
18 A Yes, I am.
19 Q In what states?
20 A I am currently licensed to practice
21 medicine in the states of New York, California, and
22 the District of Columbia.
23 Q All right. And I think you probably
24 covered some of it, but could you describe for us
25 your employment history?

Page 16

1 A After I finished my training, I stayed
2 one year as a medical examiner with the City of New
3 York and then returned to UCSF in San Francisco to
4 do two years of research in the field of forensic
5 serology. At the same time, I practiced part time
6 as a forensic pathologist with the Salano,
7 S-A-L-A-N-O, Salano County Coroner's Office in

8 Valajo, V-A-L-A-J-O, in California and with the
9 County Sheriff's Coroner's Office in Martinez,
10 M-A-R-T-I-N-E-Z, California. And I did this until
11 1980, when I joined the Karn, K-A-R-N, Karn County
12 office in Bakersfield, California. And in 1984 I
13 was appointed Deputy Medical Examiner for the
14 District of Columbia.
15 Q And you have been with the District of
16 Columbia Medical Examiner's Office since 1984?
17 A That is correct.
18 Q All right. In the course of your
19 training and employment, could you tell us roughly
20 how many autopsies you have performed?
21 A I have personally performed over 5,000
22 to 6,000 autopsies and either witnessed or
23 supervised another 7,000.
24 Q Have you written any articles in your
25 field -- excuse me. Strike that. Have you

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1 published any articles in your field?
2 A In the field of pathology, I did. In
3 the field of forensic pathology, I have too much
4 work so I have been able to present two to three
5 papers in the American Academy of Forensic
6 Scientists, of which I am a fellow, just about every
7 year. And the abstracts have been published in the
8 programs.
9 Q Okay. Do you receive journals, medical
10 journals?
11 A Yes, I do.
12 Q Could you tell us which ones?
13 A I subscribe to the New England Journal

14 of Medicine. As a fellow of the International
15 Academy of Pathology, I receive Modern Pathology and
16 Laboratory Medicine. As a fellow of the American
17 Academy of Forensic Scientists, I receive the
18 Journal of Forensic Sciences. As a member of the
19 National Association of Medical Examiners, I receive
20 the Journal of Forensic Medicine and Pathology. And
21 I also receive several other kind of throw-away
22 journals in pathology.
23 Q Doctor, have you previously been
24 recognized as an expert in forensic pathology in any
25 courts?

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1 A Yes, I have.
2 Q Could you tell us which courts?
3 A In New York, in the courts of Manhattan,
4 Bronx and Queens, in California in the courts of
5 Richmond, Fairfield, Valajo. Martinez, Oakland, San
6 Francisco, Bakersfield, Visalia, V-I-S-A-L-I-A,
7 Riverside, and in the District of Columbia in the
8 Superior Court, in Prince Georges County and
9 Leesburg, Virginia.
10 Q Thank you, Doctor. Your Honor, at this
11 time I would offer Dr. Comparini as an expert in the
12 field of medicine and forensic pathology.
13 MS. BROBST: No objection, Your Honor.
14 THE COURT: I'll accept her.
15 MS. NETHERCOTT: Your Honor, at this time
16 I would move to offer into evidence Defense Five.
17 State's now had an opportunity to review that
18 document.
19 MS. BROBST: No objection, Your Honor.

THE COURT: State's Exhibit Five.
MS. BROBST: Defense.
(Defense Exhibit No. 5, weather statistics report, was entered in evidence.)
BY MS. NETHERCOTT:
Q Dr. Comparini, you have described a few

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minutes ago what your duties are as a medical examiner. Directing your attention specifically to the issue of time of death, can you tell the ladies and gentlemen of the jury, is a time of death determination something that is routinely done by a medical examiner?
A Yes, it is.
Q Okay. And it is then possible to give a range on time of death, correct?
A That is what, that's what we only can do is give a range or an estimated time of death. We cannot determine the time of death.
Q You cannot pinpoint it, then?
A That is correct.
Q But you can give a range?
A That is correct.
Q Okay. Now, can you also just explain for us two terms? Can you explain for us the meaning of the term "cause of death?"
A Cause of death is the determination of an illness or injury or some other, several physical, pathological functional states of the body that can be altered and are directly or immediately determining that the individual dies, that is the heart stops, the lungs stop to ventilate, and the

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brain is no longer in operation. And that is what we call -- the pupils are fixed and dilated. That was the old-fashioned determination of a person being dead due to some cause.
Today we have others but that's about it.
Q Okay. Also, can you explain for us, Doctor, the meaning of the term "manner of death?"
Manner of death is the circumstances or the fashion in which the cause of death killed or terminated the life of a person.
Q Okay. And time of death, I think, is self-explanatory, correct? The time someone died?
A Time of death can be determined in different fashions, either by being present at the time of the death, which is what usually happens in the hospitals. And we call that pronounced time of death.
When we just find a body with no attendance, then we refer to time found dead. And when we issue our time of death, we are essentially forensic pathologists estimating the time of death.
Q Now, Doctor, going back for a moment to manner of death, can you describe for us what the different terms are that come under that heading?
A Well, causes of death, there are many,

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many causes of death, and they will continue to increase as our medical abilities increase in making diagnosis or the individual creates more ways in which they can kill themselves, you know. When I

started, ATV's didn't exist and going to the moon
didn't exist.
Manner of death, there are only five, and
this is an international, by international agreement
through WHO, W-H-O, that's the World Health
Organization. We distinguish, I want to give you
little letters that you can remember -- N for
natural, A for accidental, S for suicidal, H for
homicidal, and U for undetermined. That means we
don't know if it is any of the other four manners we
say first. And we refer to this as NASHU,
N-A-S-H-U. And we have to choose from one of
those.
In the District of Columbia, it's unusual,
they're the only area I know that we have another
classification, is unclassified. That means we
desist from classifying some deaths such as
overdoses. So in the District of Columbia, we have
a sixth modality.
Q Doctor, with regard to time of death
determinations, can you explain, please, what

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factors a forensic pathologist could consider in
reaching an opinion on a range of time of death?
A There are three main factors that we
consider and that is the rigor, R-I-G-O-R.
Q Can you explain, please, what that is?
A Rigor is the stiffness that the body
gains with time after death, and it is related to
the fact that muscles, after we die, they shorten.
They don't contract. The body doesn't sit up, you
know, in the cooler of my office.

Once the muscles contract, they stay
contracted and they change with time of this
happening to the muscles.
Q Doctor, can you explain, after death how
much time passes typically before rigor develops?
A Rigor mortis appears almost immediately
after death. It's just not evident in all of the
body. But it begins to develop immediately after
death in some parts of the body first, then others.
Q How long does it remain, typically?
A If will remain in a general fashion, in
a temperate climate, because there will be
variations according to different temperatures at
which the body is at the time that death occurs.
But in general, in a temperate climates, rigor

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mortis will disappear after about 16 hours, it
begins to disappear. And most bodies, by 24 hours,
will already be flaccid again.
Q Okay. Are there others? You mentioned
other things that you take into account. Can you
describe what those are, please?
A The second most useful factor we resort
to is livor or livor, L-I-V-O-R, mortis.
Q Can you explain what that is, please?
A Livor mortis -- that's not the liver,
okay. This is livor in the sense that it's purple.
It comes from Latin. That's what it means --
purple. It's a purple color of the skin that
appears after, immediately begins, also begins
immediately after death.
Q Okay. Can you just explain why that

happens?
A The purple discoloration of the skin is due to the fact that there are in the blood little tiny cells that we call the red cells and these red cells have a pigment. That pigment is in a part of the chemical products that direct the red cell, is called hemoglobin, and that's what gives my pink color to my skin.
Now, this hemoglobin changes color

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constantly. If I stop breathing for a little while, you see I turn kind of purple color because it loses its oxygen. Once it's in the tissues, hemoglobin releases its oxygen so the cells can breathe, so then they come back to the lungs and they get pink again. But after death, there's no more breathing, there's no more oxygenation, and therefore the hemoglobin remains of a so-called blue color will distinguish oxygenated blood as red in color or not oxygenated, or reduced hemoglobin as blue color. This is the purple color that the skin will see if the skin is transparent, will let us see in the different parts of the body. If I die on my back, it will be in the back of my body. If I die and I'm on the front, on my belly, this color will then appear on the front part of my body.
Q Now, Doctor, are there any other changes that occur in a body after death?
A Yes, there are.
Q Could you describe what they are, please?
A After death, the body begins to die now,

not as a whole body that stopped breathing like we described before, but different cells of our body, different parts of our tissues begin to die, too.

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And they die in different order. So we don't die altogether on ourselves.
As this death process occurs, there are different components of tissues in the body and one of the most important is the proteins. This protein makes up our muscles, make up many other structures. And when protein begins to die, we say it denatures. Muscle, as you know, is a lot of protein. And as this denaturing of the muscles take place, the rigidity that we discussed before that appeared goes away.
The consistency and structure of our skin begins to fall apart.
Q Now, Doctor, let me stop you for a moment. It's true, is it not, that these decompositional changes occur in stages, is that correct?
A That is correct.
Q Okay. Could you explain that, please?
A The stages in which this, this decomposition occur, we describe as depending on how we find the body, as early, moderate changes or advanced changes.
Q And can you explain under each of those categories what you see normally?

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A In the early changes, due to this
denaturing that we said, breakdown of the
proteins and the fact that all the bacterias are in
our body and normally living with us and help us
live, take over, and they are called gas-forming
bacterias. They produce putrefax. Just like the
food that you put in from the freezer into the
refrigerator and then if you leave it outside, it
will start to rot. And in this rottening process,
and with the gas-producing bacterias, our face gets
bloated, our eye lids get bloated, our lips get
bloated, the tongue comes out and gets bloated
because of gases pushing out, the skin starts
showing what we call marbling, the enhancement of
the veins and capillaries that are under the skin,
especially in these areas of your body -- the
shoulder area, upper part of the chest. Then the
abdomen also begins to get bloated.
In men, the entire genitalia is completely
bloated and less bloated are the arms and the legs.
Q Now, you're talking here, Doctor, about
early stages of decomposition?
A That is correct.
Q All right. Can you give us a timeframe
for this, please?

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A These manifestations I described,
bloating and marbling, and also I didn't tell you,
but if you would scratch my skin the first 24 to 36
hours, you won't be able to make it slip and peel it

off. But around 36 hours, a little bit, after 24
hours going into 36 hours, if I take the body, when
I'm trying to move the body from the areas of
handling which are like the wrist areas and the legs
to lift the body out, that skin just sloughs off.
We call that skin slippage.
This skin slippage, bloating, marbling
appear within, in a temperate climate, around 24 to
36 hours they begin to appear.
Q Doctor, when you say temperate climate,
what do you mean by that?
A We refer to a temperate climate, the
climate of around 60's, 70 degrees, all year around
if possible, like San Diego, where the humidity is
not extremely high, and it is not like in the desert
like when I was in Bakersfield, exposed to a lot of
dryness and a lot of sun and no humidity.
Q Now, it's true, is it not, that cold, a
cold temperature would slow down these processes, is
that correct?
A Yes. Cold tends to slow down the

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process but not stop it.
Q All right. And when you say cold, if
you could just give us some idea. Do you mean very
cold? What do we mean by cold?
A We refer to cold, a body will look well
preserved if it stays around below the 55, 50
degrees. In 70's, decomposition will proceed in the
way that I described.
Q Now, you've explained for us the early
decompositional changes. Could you explain for us

11 the other two categories that you described?
12 A Moderate changes, we are usually now
13 estimating that death occurs about close to a week
14 to maybe the beginning of the second week after
15 death. And now we have a change. The color of the
16 skin begins to get green. And essentially after
17 about two weeks, white or black or fair-skinned
18 persons will look all kind of black and green.
19 The bloating is much more noticeable. It
20 really is all bulging, the whole face. The eyes,
21 it's difficult to open the eyes to look at the color
22 of the eyes.
23 Q Okay. Doctor, did you have occasion to
24 review materials that I provided you in connection
25 with an autopsy that was performed on a Florence

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1 Lacs?
2 A Yes, I did.
3 Q Okay. And it's true, isn't it, that I
4 provided you with a copy of the autopsy report?
5 A Yes, you did.
6 Q And also copies of all the crime scene
7 photos?
8 A Yes.
9 Q And you also received copies of the
10 contents of Dr. Felsenberg's report?
11 A Yes, I did.
12 Q Okay. And did you review all those
13 materials?
14 A Yes, I did.
15 Q Okay.
16 Doctor, I ask you at this time if you

17 could step down, Doctor, to just assist the jury.
18 You testified that rigor, livor and other
19 changes that occur in the body after death follow a
20 certain time pattern, is that correct?
21 A That's correct.
22 Q I would like you, if you could, to draw
23 for us just a diagram that can help the jury
24 understand that. Is that better?
25 A I'm going to draw a line here on the

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1 bottom that we're going to use for giving a period
2 of time, and if we call this time zero and this 12
3 hours. This is going to be time. And then in about
4 the same space, 24 hours, and finally out here, we
5 will be close to about 36 hours. So you imagine
6 this is one, two, three, four, five, etc.
7 I'm going to draw a perpendicular line at
8 the point that I marked zero and I am going to grade
9 these phenomenon that we're going to call rigor
10 first or stiffness of the body in one plus, two
11 plus, three plus and four plus. That is beginning
12 of rigor when you move the arms, it feels a little
13 bit stiff. Then stiffness becomes very difficult to
14 move the arm. And finally, great force so even when
15 I try with my whole body sometimes, I can't strain
16 the arms. I have to get one of my big guys in the
17 office to break, we call that break rigor mortis.
18 So this is one plus, two plus, three plus,
19 and finally four plus.
20 As we said, rigor mortis begins to appear
21 right at the time of death and it develops in pretty
22 much a consistent fashion until it reaches 12 hours

23 when we say rigor is fully developed. I'm going to
24 write "fully developed." I'm going to write "rigor,
25 fully developed."

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1 If you permit me, I'm going to leave
2 this. Nobody has done the studies completely, this
3 is very nominal. None would take place in this body
4 in this fashion, in other words, in an increasing
5 fashion.
6 Then with time, most bodies in a temperate
7 climate will lose this rigidity because of what we
8 said. The proteins will leave, denature or break
9 down, and the bacterias take over. And most bodies
10 in a temperate climate, 24 hours, really you can
11 start feeling the body beginning to be a little bit
12 flaccid around 16 hours. And by 24, most bodies are
13 usually flaccid and sometimes we can extend it up to
14 36 hours. We have here the range.
15 Q Can you explain, Doctor, what flaccid
16 means? What does that term mean?
17 A Flaccid is the muscles are so loosened
18 up, there's no shortening or contraction of the
19 muscle, just limp.
20 Q No rigor, is that correct?
21 A No rigor. Like the first time when the
22 body dies, if you try to pick up a dead body, it's
23 very dead. You need two people usually to put them
24 on your gurney if they have not developed rigor
25 mortis. When they're rigor, they're quite easy to

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1 move.
2 Do you have another color?
3 I am going to overlap in the same drawing
4 the livor mortis or the changes of the color of the
5 body. They also begin more or less also at the time
6 of death. And livor mortis similarly progresses in
7 a fashion such that within about 12 hours it is
8 almost completely, almost completed, and we call
9 that it is fixed. Livor by 12 hours is fixed. That
10 statement we make because, in the first six to eight
11 hours, livor mortis can be reinstated if we change
12 the position of the body. But after about 8 to 12
13 hours, it's fixed and it will remain fixed all the
14 time. It will not go back like rigor mortis. You
15 won't change back.
16 Q All right. Now, Doctor, the autopsy
17 that was performed on Ms. Lacs was done at 9 a.m. on
18 the morning of September 18th, correct, according to
19 the autopsy report?
20 A According to the autopsy report, yes.
21 Q Give you a hand here, go on to the next,
22 different sheet of paper here --all right. Maybe
23 to keep it simpler, we'll just keep it on this
24 chart. Can you describe for us the findings with
25 regard to rigor and livor on the morning of the 18th

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1 at 9:00 when the autopsy was performed?
2 A According to the autopsy report, the
3 body was completely rigid and livor mortis or livor
4 mortis was present in the back of the deceased, but

there was also some indication that there was some remnants of livor mortis on the right side of the face and right side of the shoulder area, and there were indications in the eyes that there was also what we call hemorrhages which, when you are on the same position for a long time, they can develop in an eye and they are not an indication, specific indication of part of livor mortis.
Q Well, Doctor, just so we're clear, so that we understand this in laymen's terms, it's correct, is it not, based on Dr. Korell's description of the body, on the morning of the 18th that rigor was not present, correct?
A Rigor was not present.
Q Right. Okay. Now --
A I was talking about livor mortis.
Q I'm sorry. But with respect to rigor, rigor was not present, is that correct?
A That is correct.
Q Now, going from the morning of the 18th, based on Dr. Korell's description of the body with

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regard to rigor and any other factors that you might consider, such as decompositional changes and livor mortis, can you, to a reasonable degree of medical certainty, render an opinion with regard to time of death, a range or time of death in the case?
A Yes, I can.
Q All right. Can you tell us what that opinion is?
A The findings in the body and the factors we described are consistent with the deceased having

been dead not more than 24 to 36 hours from the time the body's examined in the Medical Examiner's Office, that is September 18th at --
Q Nine a.m.
A -- nine a.m.
Q All right. And can you just briefly explain how, explain to the ladies and gentlemen of the jury how it is that you have arrived at that timeframe?
A If the body was limp, then it means that he had lost all its rigidity. So we are about this timeframe, And if we call this period of time here X, is going to be September 18th at 9 a.m.?
Q Yes.
A We go back 24 hours, it would be around

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here, which it would be September --
Q 17th.
A -- 17th at 9 p.m. And if we go another 36 hours, we will be here, and that means that on September 17th at 9 a.m.
Q All right. Just so we're clear, Doctor. Twenty-four hours from September 18th at 9 a.m. would be September 17th at 9 a.m., correct?
A You're right. And then minus 12 would be p.m.
Q 9 p.m., correct?
A That is correct. Thank you.
Q And it's the 16th, correct, before the 17th?
A That is right. My mathematics is not too good today.

17 Q Okay. Doctor, take the stand again,
18 please.
19 Court's indulgence for one moment. I have
20 no further questions, Your Honor.
21 THE COURT: Cross examine.
22 CROSS EXAMINATION
23 BY MS. BROBST:
24 Q Thank you, Your Honor. Dr. Comparini,
25 are you familiar with the term "board certified"?

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1 A Yes, I am.
2 Q What does that mean?
3 A Board certification in the field of
4 medicine is the status in which a physician has
5 passed some tests by some board that, in the case of
6 pathology is called the American Board of
7 Pathology. And these tests are usually taken at the
8 time that you finish your residency and it kind of
9 is a way in which we test the uniformity of the
10 training systems in the United States.
11 Q All right. So if one passes this test,
12 one becomes board certified?
13 A That is correct.
14 Q Are you board certified in your field?
15 A No. I passed only the forensic
16 competence test of the American Board of Pathology,
17 1977, and I have not taken another part that is
18 necessary to obtain that certification.
19 Q Now, have you ever testified for the
20 State in a death penalty proceeding?
21 A No, I have not.
22 Q Have you previously testified for the

23 defense in such a proceeding?
24 A No, I have not.
25 Q Did you write a written opinion for your

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1 testimony in this case?
2 A No, I did not.
3 Q Is that unusual?
4 A No, it is not.
5 Q It's not unusual that an expert would
6 not write a written opinion?
7 A No, it is not.
8 Q Did you take notes when you conducted
9 your investigation into this case?
10 A I had the reports that I examined at the
11 first conversation I had with counsel.
12 Q Okay. The first conversation that you
13 had with counsel. But did you take any notes about
14 your opinion?
15 A No, I did not.
16 Q Did you talk to the investigators, the
17 police investigators in this case?
18 A No, I did not.
19 Q Isn't that something that you would
20 normally do before you would render an opinion in
21 your own courts in Washington, D.C.?
22 A No. We only use the police report,
23 sometimes depending on the case we may need to talk
24 to the detective if we need more information or
25 we'll go back ourselves to the scene. But normally,

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we start our autopsy with a report issued by the police department.
Q Well, if this had been your case in Washington, D.C., isn't this a case in which you would have wanted to talk to the police investigators?
A Oh, most definitely.
Q And you were not able to do so in this case?
A That is correct.
Q in fact, when were you consulted by the defense in the case?
I was consulted, I believe, about the first week of September.
Q And how did that come to be?
A I received a telephone call from counsel.
Q And by the first week of September, you mean in 1989?
A That is correct.
Q Were you anticipating this call or did it just come out of the blue with no --
A Just came out as one more call from an attorney, which we receive many in the office.
Q Okay. Often from defense attorneys?

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A From both. We are a neutral party in the office of the Chief Medical Examiner and we talk both to the defense counsel and to the prosecuting counsel.

Q Did you have a chance to talk to the medical examiners who handled this case for the State of Maryland before you formed an opinion?
A No, I did not.
Q Now, you agree, do you not, that the circumstances in which a body is found are very important in establishing a time of death?
A The circumstances?
Q Yes. The environment, for example, let's start with the environment?
A Oh, yes, yes, they're important.
Q Do you find in establishing the time of death that there is a difference if a body, for example, is found in water?
A No.
Q Does water affect your determination of time of death?
A The estimated time of death?
Q Yes, ma'am.
A You mean if I find a body in the Potomac?

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Q Well, if you have a chance to talk to the investigators and you ascertain that a body was partially submerged in water, would you consider that? Would that be something that you would consider before you form an opinion as to an estimated time of death?
A If it is a small amount of water like in this case, somebody found in a tub, it would not make much difference. If it is a body that was submerged in the, for example, the Potomac, where we

recover them there, where there are other
microorganisms and live flora in the water, then,
yes, it will make a difference.
Q Okay. So, as I understand you, it
makes not to you in determining an estimated time
of death where whether this body was partially
submerged in water prior to being found?
A I will consider it if the body had been
submerged completely, maybe. But when it is
partially submerged and there is not much difference
from one side of the body to the other, then
probably the fact that the body was in the water,
was not such a long time, and therefore did not
cause much differences between one side of the body
and the other.

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Q Now, I notice when you testified with
respect to time of death and were able to draw this
chart for the members of the jury, that you stopped
your chart at 36 hours, is that correct? That's
where you ended?
A That's because I didn't have more
paper.
Q Okay. And when you testified, you said
certain things happen up to 36 hours. And then you
were asked for more advanced stages of decomposition
and you told us what happened at one week and two
weeks after someone is killed, is that correct?
A That is correct.
Q So is there no difference between what
happens at 36 hours and what happens at one week?
A Yes. The decomposition continues to

advance. But major differences so we can give an
early part and advanced changes in our description
are not easy to time and therefore they're kind of,
they can be melting one with another, overlapping
one with another.
Q So these things overlap?
A They can overlap, yes.
Q So when you say 36 hours, it could be 38
hours?

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A Oh, yes, definitely
Q 40 hours?
A Yes.
Q These things are all an estimate, kind
of a continuum of decomposition, is that correct?
A That is correct.
Q So could it be 44 hours when you say 36
hours?
A By 48 hours, most definitely the body
will be limp.
Q Limp at 48 hours?
A Oh, yes.
Q Were you told when you discussed this
case with defense counsel that their theory was that
it was less than 48 hours? Was this something that
they discussed with you on the phone?
MR. SCHLAICH: Objection.
THE COURT: Overruled. Did you take such
a statement into consideration?
A I was told that they -- I was asked if I
could estimate the time of death considering certain
parameters. The fact that I learned during the

23 reading of all the material that I requested that
24 there was a discrepancy has nothing to do with the
25 facts that I have placed in the chart that I made.

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1 Q But as I recall, and correct me if I'm
2 wrong, you never mentioned in direct examination
3 anything that occurs at 48 hours. We ended at 36.
4 A Because after 36 and 48, like you very
5 much said, they're quite similar.
6 Q Okay. Now, 36 and 48 hours are quite
7 similar and on your chart as well, you show that
8 livor is fixed at 12 hours and remains so fixed for
9 an indeterminate length of time, is that correct?
10 A That is correct.
11 Q And rigor, the body comes under all
12 these general conditions. And although this is an
13 estimate and subject to some variables, rigor
14 generally ends around 24 hours, is that what you
15 said?
16 A That is correct.
17 Q And that the livor and the rigor remain
18 constant for an indeterminate amount of time, until
19 these more severe forms of decomposition take place?
20 A Oh, yes.
21 Q So a body --
22 A The body is limp and purple.
23 Q Okay.
24 A Once it becomes limp and purple, it
25 stays limp and purple.

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1 Q So a body is limp and purple at 36
2 hours, approximately, because these are all
3 approximates?
4 A That is correct.
5 Q 48 hours?
6 A That is correct.
7 Q 58 hours?
8 A That is correct.
9 Q Limp and purple. All right.
10 A Well, not purple any more. Remember, I
11 said it becomes green around the third, fourth day.
12 Q Third or fourth day. Okay. Great. I'm
13 going to show you some photographs and I would ask
14 you to look at these and see whether you had an
15 opportunity to review these photographs when you
16 performed your investigation in this case.
17 A Yes, I reviewed.
18 Q You have seen those before?
19 A Yes, I have.
20 Q Okay. And specifically, I'll refer to
21 the numbers on the back when I ask you about these.
22 I'm showing you that which has been marked
23 as State's Exhibit Number 28-P. Shows the deceased
24 in a tub of water, somewhat submerged, on her right
25 side. Is this consistent with the livor, the set of

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1 livor which you have described that you read from your
2 autopsy report provided by Dr. Korell?
3 A Yes, it is consistent with the
4 description of livor mortis by the pathologist.

Q And of course, it goes without saying,
you never saw Mrs. Lacs' body?
A That is correct.
Q Because you weren't called in until
September of this year?
A That is correct.
Q Okay. Now, you described a certain
mottling that occurs?
A Marbling. M-A-R-B-L-I-N-G.
Q I'm going to show you State's Exhibit
Number 38-S and ask you whether that photograph of
the right arm of the victim appears to you to be
consistent with this process you described as
marbling?
A No, it does not.
Q Okay. What are those marks? I won't
characterize them.
A These are linear blue marks at the
external aspect of the back of the elbow and then
here part of the arm which is a vein. The lady's
very white and skin of elderly people is very thin,

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so it's easy to see their veins. You get old, that
happens.
So what we're seeing is cephalic,
C-E-P-H-A-L-I-C, the cephalic vein in the surface of
the skin, which, for example, drug addicts use to
inject.
Q Okay. Does anything in that photograph
resemble to you the process you describe as
marbling?
A No.

Q How about State's Exhibit Number 28-T?
Can you explain to me why that photograph is
different from the condition called marbling by you?
A Because there's no marbling here.
Q Okay. How does that look different from
marbling?
A If I could make a drawing, maybe.
Q Fine with me.
A Can I take the photographs?
Q Certainly. It was this one.
A As I explained before, marbling, that is
M-A-R-B-L-I-N-G, comes from marble. Marble has like
little lines that are very, it's conspicuous and
others are very conspicuous. If it usually appears
-- I could draw it.

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If this is the neck and these are the
shoulders and these are the arms and then here
begins the forearm and this, here's the forearm.
These are the wrists and the hands. These are the
breast area, the body.
Marbling appears -- use red ink -- in this
shoulder area in the front and back and little marks
like marbling. And at the same time that this
phenomena appears, beginning of bloating begins and
this skin, instead of looking like normal and
wrinkly, begins to look like distended a little
bit.
So there's two phenomena that occurs that
you can see with your eye. One appears as this
marbling and the other one is slight distention of
the skin. And like I said before, it is not common

17 that it appears early in the, I'm going to say
18 early, within the first 36, 48, to maybe three days
19 in the forearms. It's very unusual to see it in the
20 forearms. On the contrary, as you get to the distal
21 ends of the extremities, the toes and the fingers,
22 they become many times dry. We call the drying
23 effect in the early first about 36, 48, beyond
24 that.
25 You can see a drying effect right in

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1 there, bloating, because of the different kind of
2 skin we have in the palms and in the plantar,
3 plantar, P-L-A-N-T-A-R, the plantar aspect of your
4 feet. May I have the pictures again?
5 Q Yes, ma'am.
6 A Can I show this to the jury?
7 Q Yes, ma'am.
8 A Counsel has referred to these lines
9 here, this is what we call the antecubital forsa.
10 This area here and here, where they put your
11 injections in the hospital, we call it antecubital
12 forsa. It's opposite the elbow. This part of the
13 arm, opposite the elbow.
14 The linear kind of blue, green.
15 THE COURT: Doctor, don't make any
16 markings on that.
17 A No. Blue mark. That is just a vein
18 that is visible through the skin that is so thin.
19 And as I said, skin is transparent. So this is a
20 vein. And then when you look at the remaining of
21 the skin of this arm, it is not distended; it's
22 normal looking. It's a blue-purple mark here in the

23 middle of the forearm and that is something else.
24 That's not marbling. That is a contusion or bruise
25 -- the same. That is in reference to State's

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1 Exhibit Number 28-S as in Sam.
2 On State's Exhibit Number 28-T, as in
3 Thomas, we are seeing the back now of this forearm
4 again, of the right forearm, where there is an
5 entire dark discoloration from tanning from the
6 sun. That's not marbling, not bloated, and doesn't
7 have these little fine lines.
8 And then there's another little
9 purple-blue area that's kind of quadrangular which
10 is different from the one observed in the Exhibit
11 S. The difference is that this is a normal process
12 in elderly people. We call that an ecchymosis.
13 That's suffusional blood, because as we become old
14 our capillaries become fragile and they bleed
15 easily.
16 So no marbling either in T.
17 In State's Exhibit Number 28-U, we have,
18 again, this is lividity, not marbling, and there's
19 one little, again, blue linear, linear, line,
20 linear. Just one single. They don't appear as
21 linear and single. They appear as little marks I
22 made in the red pen, in the shoulder area and upper
23 part of the extremities, in the upper part of the
24 neck, and this beginning of bloating when marbling
25 begins to occur.

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These mottled -- that a mottled -- purple
discolorations consistent with lividity or, what we
discussed about, settling of red cells with time.
Then finally, as State's Exhibit Number
28-V as in Victor, again it's showing the fact that
the deceased was found on her right side and you are
again seeing the process of livor mortis or
lividity, not marbling. It is not common to see
marbling in this part of the face.
MS. NETHERCOTT: Your Honor, at this time
I would ask if the jurors can see those photographs
that the doctor's referring to?
MS. BROBST: No objection.
THE COURT: Would you pass those to the
jurors? These are the same photographs that were
originally submitted to the jury. Okay. Another
question while she's still at the board.
MS. BROBST: No, not while she's at the
board. Doctor, take the stand again, please.
BY MS. BROBST:
Q Now, the skin slippage, didn't you
testify on direct that that occurs about 36 hours?
A After 36 hours, usually.
Q How far after 36 hours?
A Oh, around 48 hours to beyond the second

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day of death is when we handle the body. In
handling, the skin slips and separates.
Q So any time, in other words, from 48
hours to three days, is that what you're saying now,

for skin slippage?
A In a temperate climate, yes.
Q Okay. And how about the marbling?
What's your testimony on that?
A Marbling.
Q Length of time after death in a
temperate climate for marbling? I thought you
testified 36 hours.
A That's again consistent with early
changes of decomposition, which we start seeing
later, about 36 hours, at least within the second or
third day of death.
Q Okay. But the second or third day of
death would not be unusual before these changes
would occur, is that correct?
A Before two days, they would be unusual.
Q Before two days it would be unusual to
see marbling or skin slippage?
A Correct.
Q So it would make sense, then, that there
was no skin slippage in this case even if she had

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been dead for more than two days, is that correct?
A Oh, no. Then I misunderstood you. For
skin slippage and marbling to have occurred, she
should have been dead at least over 36 to 48 hours.
Q Or --
A She has none of those indications.
Therefore the time of death is closer to 24 to 36
hours. That is the time that the body became limp.
Q Although skin slippage and marbling
don't usually occur for two or three days?

11 A Correct.
12 Q I would like to see Defense Exhibit
13 Number Five, if I may.
14 When did you have the benefit, Doctor, of
15 reviewing Defense Exhibit Number Five, the weather
16 report for the Baltimore area on the relevant dates?
17 A This morning.
18 Q You did have a chance to review it this
19 morning?
20 A Well, at least scan.
21 Q Okay. And what did it indicate to you
22 about the weather conditions on those days?
23 A It corroborated the impression of the
24 first I think, police officer at the scene and his
25 report that the day was cool and rainy, I believe,

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1 and that the temperature was consistent with
2 seasonal, in the 70's and 69 during the day and
3 going down in the day and going down to the 50's in
4 the nights.
5 Q And the water wouldn't affect the
6 temperature as it surrounds the body at all?
7 A Well, we know that because the deceased
8 is partially exposed to water and partially not
9 exposed to water and there's no differentiation
10 between one side of the body and the other.
11 Q Now, let me ask you this. With respect
12 to when rigor becomes established and full and when
13 it dissipates, your estimate of 12 hours in a
14 temperate climate, is that in accord with the
15 authorities in this area, with the written
16 treatises?

17 A Most books that you will read, and my
18 experience through many years is that, within 12
19 hours, both livor mortis and rigor mortis will be
20 pretty much established. And then from then, livor
21 stays the same and then gets mixed up with the green
22 discoloration of the body. Then you cannot
23 differentiate any more when the whole body becomes
24 green.
25 Rigor mortis, usually by 24 hours in

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1 temperate climates, the body's limp again. As I
2 said, sometimes it gets limp very early, at 16
3 hours.
4 Q Okay. And that's in accord with the
5 written authorities in this area with respect to
6 rigor?
7 A Yes. If you read most of the textbooks
8 that we use as the basic textbooks in forensic
9 pathology.
10 Q Okay. And the difference, therefore --
11 I'm back to your chart now. I'm dealing with rigor
12 and livor.
13 The difference between, it is your
14 testimony, a body's appearance at 36 hours is no
15 different in the future, from 36 to 40 to 44 to 48
16 to even 58, until the more advanced forms of
17 decomposition occur?
18 A Moderate first.
19 Q Moderate first?
20 A Advanced is when the kind of maggoted
21 activity begins to infest the body and eat it up.
22 Q Okay. If you can try to follow me. I

23 know I'm not using medical terms. But at 36 hours,
24 you testified rigor is gone. The body is limp?
25 A Right.

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1 Q And livor is fully out and will not
2 change or switch positions?
3 A Correct.
4 Q And from 36 hours into the future until
5 those more advanced forms of decomposition occur,
6 the body remains the same, limp and purplish on the
7 side that it was lying on?
8 A Moderate changes.
9 Q Okay. And the moderate changes you
10 testify occur within two to three days after death?
11 A We started describing moderate changes
12 by the end of the week.

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5 (Defendant's Exhibit Nos. 6 and 7, charts,
6 were entered in evidence.)

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[WITNESS: DR. ROBERT JOHNSON]
13 BY MR. SCHLAICH:
14 Q Dr, Johnson, you are presently employed
15 where?
16 A I am a Professor of Justice, Law and
17 Society at American University in Washington, D.C.

18 Q How long have you been a professor
19 there?
20 A I've been a professor there since 1977,
21 for 12 years,
22 Q Doctor, if would you, please, would you
23 recount for us your educational background?
24 A I have a Bachelors in Psychology from
25 Fairfield University in Connecticut. I have a

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1 Masters and a Ph.D. in criminal justice from the
2 State University of New York at Albany.
3 Q And do you have any training beyond the
4 Ph.D. level?
5 A I have received some six credits in
6 forensic sociology, which is the application of
7 social theory to problems of crime.
8 Q You have been engaged in research with
9 respect to criminals in confinement, is that
10 correct?
11 A Yes. Over the years, my main research
12 has been on adjustment to prison by inmates and also
13 by working in prison among the staff. Criminal
14 Justice is a field that is devoted to the study of
15 crime and punishment, and the areas I have focused
16 on are violent crime, life in prison, and the death
17 penalty.
18 Q And if you could, you've mentioned,
19 first of all, work in the institutions with the
20 staff. Could you tell us what work you've done
21 inside?
22 A Well; I've been asked by a number of
23 states and also by the City of New York to assist in

24 training correctional officers. I think the
25 understanding was that what we've learned about

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1 prison adjustment would be of interest to the staff
2 who have to manage the inmates and assist them in
3 their adjustment.
4 I've also done studies of officers and how
5 they do their jobs and how the stresses of prison
6 life affects them. Training sessions have been
7 offered to the staff to help them better cope with
8 the stresses of their work and to be more effective
9 as correctional officers rather than merely as
10 custodians.
11 Q And on approximately how many occasions
12 have you given those kinds of training sessions?
13 A I would say between 5 and 10 times over
14 the last 10 years. Usually, I'm invited in to lead
15 a day's worth of workshops on different aspects of
16 prison adjustment and I've been consulted a number
17 of times to help prepare programs, but not
18 necessarily to deliver them to the staff involved.
19 Q Could you tell us, it's my understanding
20 there's a specific theory of prisoner adjustment you
21 subscribe to, is that correct?
22 A Well, I think a fair way to say it is
23 that there's been a great deal of research done on
24 the adjustment of lifers -- that's a slang term used
25 on inmates who are given very, very long sentences,

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1 including a life sentence and even a true life

2 sentence. What we have learned is that the life
3 sentence prisoners, unlike --
4 Q Let me stop you for just a second. We
5 just want to talk about your approach to this type
6 of research. There's a social psychology approach
7 or something?
8 A Yes. The angle that I take on all the
9 problems I study is a social-psychological one,
10 which means I look at both the social and the
11 psychological forces, both the personal and the
12 environmental forces as they bear on the situation.
13 Q And on this subject of the adjustment of
14 lifers, in particular, what, if any, books have you
15 written?
16 A Well, I've written a number of books on
17 prison life. The first was entitled Culture and
18 Crisis in Confinement, which was published in 1976.
19 In that book, I studied the adjustment of prisoners
20 from different cultural backgrounds, primarily
21 black, Latin and white prisoners.
22 In 1981, I published a book entitled
23 Condemned to Die, which was a study of prisoners who
24 are sentenced to death and who are living on death
25 row under the death sentence.

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1 In 1982, I edited an anthology or a
2 collection of writings including my own and those of
3 others, called The Pains of Imprisonment, and the
4 focus of that book was on the stresses of prison
5 life and how they affect inmates as well as staff.
6 In 1987, I wrote, essentially, an original
7 text called Hard Time. Understanding and Reforming

the Prison is the subtitle. And that is my understanding as an expert in penology about what the nature of prisons are and about what, how they might be best used.
My most recent book is coming out in January. It's called Death Work. This is a study of an execution team which I worked with as a researcher for the last year or so, observing their training, and in two cases observing them carry out executions.
Q And have you written and published any other materials, that is articles or editorials?
A Yes. In academics you make a distinction in books where you have generally a main thesis, and between specific articles on very specific topics. I published about 25 or maybe 27 articles over the years, perhaps 10 or 15 chapters in other people's books, as well as some other

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technical reports that would only be available co people with a very narrow interest with a specific question.
Q Now, have there been any occasions in the past when you have been recognized as an expert in court?
A Yes. I believe over the years, I've been asked to testify about 10 times, and in those cases I've been recognized as an expert generally on a social-psychological view of either violence or prison adjustment or both.
Q Could you give us, could you tell us if you remember what court systems you have testified

in as an expert?
A Well, I have testified in this court system before as well as in Baltimore City and in other parts of Maryland. I've been involved in some cases having to do with suicides in jails in Los Angeles and Philadelphia. I testified on one occasion in federal court, the 5th Circuit, having to do with the effects of life on death row and whether or not that was a cruel and unusual punishment, and a few other specific topics.
MR. SCHLAICH: Your Honor, at this time I would offer Dr. Johnson as an expert in criminal

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justice with a speciality in social-psychological adjustment of people serving a life sentence.
MS. BROBST: No objection, Your Honor.
THE COURT: I'll accept him.
BY MR. SCHLAICH:
Q Now, Doctor, during the qualification, you were about to tell us your decision or your theory, that is, of the body of research on lifers and how they adjust in prison. Could you tell us that now, please?
A Yes. It's an interesting finding that lifers tend to be model prisoners, tend to be very well-adjusted prisoners. I think at first this is very surprising, but you have to recognize that from where the lifers sit, the prison has become their home. It's not a home they want to be in, it's not a home they're happy in, but it's home and a life they have to accept.
As a result, the lifers come to see their

interest, their self-interest as served by a
better-run, stable, clean, orderly, decent prison.
So as a result, not only will penologists, but also
prison officials will tell you that lifers tend to
be the more or less solid citizens of the prison
community. These are the people who care about the

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prison being clean. These are people who care
about the prison being orderly, about it being safe,
about it offering things to do during the day so
that one can get through one's life.
The implications is not that lifers find
this easy or pleasant, but the fact is they have to
work out some kind of an existence in prison and
this they try to do by taking advantage of those
opportunities for living that exist in prison.
So you will discover, for example, that
lifers, more than short termers, are likely to work,
likely to seek out a job in the prison, particularly
a job that offers some responsibility and maybe some
rewards. Lifers are more likely to sample programs,
to involve themselves in clubs inside a prison.
They are much more likely to try to
structure their day highly, to fill it with events
and activities. And the reason is that lifers don't
want to have to dwell on what they've left behind in
the outside because that hurts. They don't want to
dwell on the future, which is made up of nothing but
more prison days, because that hurts. So they
emphasize day-to-day life in the prison. And they
develop a life that has a kind of mechanical, almost
robotic quality to it. It's thin existence but

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it's an existence that does offer some dignity and
it's an existence that the prison officials find
serves their interest as well.
So you will discover -- I think this is
the most striking fact -- that if you look at rules
violations, consistently, across a wide range of
studies, lifers commit fewer rules violations than
short terms, significantly fewer.
Q Now, on that particular point, you
brought with you a display today, is that correct?
A Yes, I did.
Q Maybe if you'd step down, we can put
this up and you can explain to the jury.
A The simplest way to explain this is the
back bar would be the short termers and the checked
bar would be --
THE COURT: I don't think all the jurors
can see it that way. Why don't you move it up
closer or put it on that easel?
A This is a prison rules and infraction
chart. I'll hold it for you. Something that I
developed to help, to help summarize what the
research in this area would find. A number of
researchers have gone out and calculated the number
of rules violations that occur in prison.

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In any case, a number of people have gone
out to study rules violations. And what they
discovered was that short term inmates, whether they
are younger, under 22, in their twenties or 30, even

40, commit more violations, significantly more rules violations than do lifers. That's the first finding. So lifers, even early on, have fewer violations than do short termers.
Generally, as the prisoners age in prison, they mature, they become more settled. I think they come to realize that breaking rules in prison is self-defeating. As a consequence, you find that as inmates age, they commit fewer infractions. This aging effect or maturing effect is even more dramatic among lifers, is not at all uncommon. For lifers, 30, even 40 years, all of them at some point will be, tend to have less than one infraction a year.
I think the point to emphasize is not only is this a significant finding, it goes against common sense at first, because you think at first lifers have nothing to lose. But as I try to point out, they have everything to lose because prison is the only life they have. If they get moved out of their cell and moved in isolation, that hurts. That

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is their home.
Lifers tend to decorate their cells a little bit more, maybe not tastefully in my point of view. You take that them in, drop them in the hole -- he gets a job going. He's maybe respected by the staff. This is not uncommon. And he has some self-respect. This is not uncommon, either. And you rip him out and drop him in the hole, that's a terrific price.
So these offenders are very concerned

about maintaining that little world they develop there, and as a result don't violate many prison rules.
This is not to say they become reformed citizens. I think it's clearly a question of self-interest. But I think the self-interests there are dramatically evident. It is obvious that if you break rules in that setting, you're highly likely to be caught and highly likely to be punished; whatever routine you have going will be interrupted, and there's a high price to pay.
In addition to that, the routine that these lifers have established, and I mentioned earlier is highly structured, highly routinized, in a sense that routine offers the kind of external

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controls that their personalities didn't have formed in internal controls. So the prison life is simple enough and structured enough and controlled enough for them to be more in charge of themselves than they are outside. Not happier, because they would rather be elsewhere, but that's not a realistic option.
Q Thank you. You can return to the stand.
Doctor, if you know, where do people serving a life sentence in Maryland's prison system get sent to?
A The Maryland Penitentiary.
Q Are you familiar with that facility?
A Yes, I am familiar with it.
Q You have been in that facility?
A I have been in it a number of occasions,

17 recently interviewing prisoners, some of whom were
18 up for trial or retrial. And over the last two
19 years, in particular, I have made visits to the
20 penitentiary to interview staff of some inmates
21 whose cases I was involved in. And also I brought
22 my classes from the University to the penitentiary.
23 The penitentiary is very interested and willing to
24 give college students tours of the prison as well as
25 college professors, and they do open their doors

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1 quite graciously to people who have an interest in
2 the field.
3 Q Now, based on the information you've
4 gathered while working in the Maryland Penitentiary,
5 have you found that the same results you testified
6 to here today as a general rule apply in the
7 Maryland Penitentiary?
8 A Well, there's no reason to doubt that
9 they would apply. There's never been a specific
10 study of Maryland's infraction rights. But if you
11 talk with officials who know the longer term inmates
12 there, they don't have any reason to doubt this
13 finding.
14 There has never been a study, a systematic
15 study of American prison wardens on this point but
16 there is a study of other prison wardens in other
17 countries. And it's generally well-known both in
18 terms of lower, in terms of day-to-day talk that
19 goes on in prison as well as in terms of the body of
20 research, that the staff recognizes that the lifers
21 are even a stabilizing force in the prison because
22 of their interest in stability, order and so on.

23 Some of the studies that have been done
24 have dealt with the Maryland prisons and have the
25 same types of findings, but there has never been a

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1 specific study, Maryland study on infraction rates.
2 So a reasonable inference is that that penitentiary
3 like others would fit that model because we know
4 there's a great deal of stability in that finding.
5 The majority finding summarized in that chart is the
6 product of 10 or 15 independently-conducted,
7 empirical studies in a number of different states
8 and in one case, in a different country, Australia.
9 Q You also, during your testimony, have
10 referred to the body of research. That means, I
11 take it, there are more than just you researching
12 this particular point?
13 A Oh, right. Right. When I say a body of
14 research, what I mean is that there have been a
15 number of studies and a number of people who have
16 done both empirical studies of rules infractions as
17 well as interview studies of the adjustment of
18 inmates and I'm just one of that group of people.
19 Q Now, Doctor, there came a time when you
20 were called to review the Kevin Wiggins case, is
21 that correct?
22 A Yes.
23 Q And did you have a chance to meet Mr.
24 Wiggins?
25 A Yes, I did.

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Q And did you have a chance to review his jail records?
A Yes. I reviewed his jail records in some detail.
Q And from those records, you found that he had, in fact, violated some rules while held in the Detention Center, is that correct?
A Yes, I did.
Q Could you tell us what rules he was found adjudicated to have broken?
A Well, he had four adjudicated rules violations over his time in the jail and these had mostly to do with tension with officers, conflicts over how long telephone calls could go, or difficulty responding to orders from officers. Mr. Wiggins was described in those encounters as uncooperative, as making verbal threats, and as blustering quite a bit, and that does periodically happen early on in people's careers.
I think it's worth emphasizing that jails are not prisons. They're different kind of settings. Jails have a higher turnover, they're less stable settings.
The literature on lifers applies to people

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given life sentences and sent to prisons, which is where lifers go. We know from that body of research that people who had prior sentences that were shorter adjusted like other short term inmates and

short term inmates in general feel they don't have much to lose by defying staff or disobeying rules. So you tend to find that a person who is given life today but who in the past has had only jail experience or prison experience, they may have had some trouble in terms of rules violations and earlier confinements, but when they're given a life sentence, the psychology of the lifer as I described it to you takes over and they fall into this pattern of a decent prison adjustment.
Q Now, the four infractions that you noted cover a period of time that dates back to September of 1988, is that correct?
A Yes, that's right.
Q Okay. Now, Doctor, based on your speaking with Mr. Wiggins and your review of his records, do you have an opinion to a reasonable degree of certainty in your speciality as to whether Mr. Wiggins would adjust in prison under a sentence of life as you have testified lifers do generally?
A Yes, I do.

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Q What is that opinion?
A My opinion is that he would fit the generalization. Can I elaborate on that point?
Q Sure, please.
A Okay. This body of literature is a very strong one. More than 9 out 10 lifers fit this example. So people who go to prison under a life sentence and are troublemakers tend to be a very distant minority or very small minority. We frankly don't know how to predict who will be in that

group. But a reasonable person would presume that any person going to prison under a life sentence would fit that general category because the vast majority do.
Now, the reason I interviewed Mr. Wiggins, even though he wasn't doing a life sentence and therefore his adjustment wasn't immediately relevant, I nevertheless wanted to see if he showed some of the patterns of settling into jail life as you would expect a lifer when he gets to prison to show a settling-in pattern. And I believe that he did.
You mentioned, first of all, that there are four infractions. Two of them were very early on. And my examination of those incidents and my

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interviews with Mr. Wiggins led me to believe that his early experiences were very traumatic for him. He was depressed. He was very upset. He had never been in a jail before. He'd only been in a lock-up before. So I think the initial adjustment was extremely difficult.
He gradually began to settle in. Although he did have two incidents in June, none of those incidents involved violence.
In my discussions with Mr. Wiggins, he indicated that he felt that he was gradually learning to bend to the rules of the prison. When he first got there, he was rigid. He would defy authority because he didn't really understand what lifers come to understand, and that is that you must go along to get along in institutions, especially if

you're going to be there a long, long time. I think that that lesson is gradually, perhaps slowly being learned by Mr. Wiggins. So that would reinforce my general expectation that he would adjust decently to prison.
MR. SCHLAICH: Court's indulgence, please. No further questions, Your Honor.
THE COURT: Cross examine.
CROSS EXAMINATION

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BY MS. BROBST:
Q Thank you, Your Honor. First of all, I want to clarify. You're not here to try to tell this jury what would be an appropriate sentence in in this case, isn't that correct?
A No, I'm not to make the sentencing decision.
Q Okay. And you wouldn't even attempt to do so, isn't that also correct?
A That's correct.
Q Now, this theory of prison adjustment, whose theory is this, this theory that you espouse?
A The term "theory" is -- I think it's just a strong empirical finding that had been widely discussed in the penological literature.
Q Is it referred to as your theory in this circle of experts?
A Not specifically as my theory but I'm one of the people who is known to have made some contribution to this body of knowledge and who is competent to summarize it, which is what I tried to do here.

23 Q And is it a contrary theory that is
24 bandied about?
25 A No. At the moment there's none, and I

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1 think that reason there is none is the very strong
2 empirical basis for this finding. There is not a
3 competing body of studies that says lifers are
4 troublemakers, for example, if that's what you're
5 implying.
6 Q And who has done this research?
7 A Well, there would be a number of
8 people. Flannigan would be one. He has an article
9 in my anthology, The Pains of Imprisonment.
10 Hanstolk (phonetic) would be another. He has an
11 article also in my anthology. John Conrad. There's
12 a pretty wide range of people.
13 Q Are these people associated with the
14 University as a rule?
15 A Some of them are. So those names I did
16 mention to you are researchers. That's true. Some
17 of them did research, though, when they were members
18 of the Department of Correction, such as Conrad.
19 Departments of Corrections do have
20 research arms and some of them are staffed by
21 academics. Some academics go into those departments
22 for a while and go back to academia and some do the
23 reverse. They start in academia and go to the
24 departments and stay there.
25 So it's a pretty good range of different

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1 kinds of people doing the studies.
2 Q And you consider yourself, correct me if
3 I'm wrong, an expert in penology?
4 A Penology is certainly a recognized term
5 for prison, certainly.
6 Q And are degrees offered in any
7 recognized university in penology?
8 A Degrees are offered in criminal justice
9 or criminology, and then within that area you focus
10 on one aspect of the criminal justice system. At
11 the State University of New York at Albany, for
12 example, somebody might have gotten a Ph.D. in
13 criminal justice generally and then developed a
14 specialized interest in the prison systems or
15 specialized interest in the specialization of the
16 courts.
17 Q Now, you testified that you have
18 testified in a number of courts in this and other
19 areas. It's true also, however, that you've never
20 testified in court for the State, isn't that
21 correct?
22 A Well, I've never been asked and I would
23 be happy to.
24 Q And you've testified approximately 10
25 times, is that what you said?

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1 A Yes, I think that's right.
2 Q And personally, your personal views on
3 the death penalty are that you're opposed to the
4 death penalty, isn't that true?

A Yes, I'm personally opposed to it but I certainly recognize that reasonable people can differ with me on that.
Q Now, these incidents, these four adjudicated infractions that you've referred to in your direct, you don't consider four to be a lot in a 13 month period?
A Well, if it were a person doing a long term prison sentence, it would be unless it were very early on. Even then it might be a bit high, I think what point I tried to emphasize was that we know that before people get life sentences, they may have a different way of adjusting either to jail or to a short term prison sentence. It's well-known, for example, that an inmate who might have a two to five year sentence could have a whole lot of trouble in prison and be a troublemaking inmate. If he comes back on a sentence of life or natural life, the odds are very much that his adjustment will be much better for the reasons I've indicated.
Q So the answer is no?

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A Well, the answer is that it's hard to know for sure what exactly those jail infractions portend for prison life. Four infractions is not outrageous. None of the activities were overtly violent. There was no indication of his adjustment getting worse over time, becoming more unstable or more problematic.
So I think that it was, it's reasonable to infer that he's beginning to adjust better to confinement and this process will probably continue

and accelerate if he were given a life sentence.
Q Okay. So four is not a lot, in your opinion?
A Right.
Q Now, when you spoke to Mr. Wiggins, I assume you introduced yourself and told him why you were there?
A Yes, that's right.
Q So when he discussed with you his chance to act as a model prisoner in the future, he understood that you were there to testify as a defense expert?
A Well, he knew I was a defense expert but he didn't know what my expertise was. I simply introduced myself as somebody who is an expert on

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prison adjustment and I'd like to know how you're adjusting here.
Q And he said fine?
A No, he talked about problems he had. I mean, he had been very depressed when he first arrived. He had been very upset. He's had some problems with the staff and these are very upsetting to him. So no, he didn't say "just fine."
Q But you have been able to conclude, nonetheless, that he would adjust in the future?
A Well, as I indicated, he did describe the fact that he's settling in a little better. He's not getting into as much trouble. He's not as rigid.
I think there was a recognition on his part that early on, he refused to bend over small

17 things and petty problems grew up into infractions
18 and this was self-defeating. So I think he's
19 beginning to recognize that. And he communicated
20 that to me.
21 Q And you feel that he's beginning to
22 recognize that because that is what he communicated
23 to you, right?
24 A It's a sensible, it's a very plausible
25 picture of his adjustment given both the official

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1 record and his description of the incidents, yes.
2 Q Okay. Now, obviously, from your very
3 study, there are indications that some people
4 certainly -- first, let n clarify your definition
5 for a moment.
6 What did you consider to be a lifer? Did
7 you include any long term sentence?
8 A Long term, lifers and long termers are a
9 group that generally is considered to be people who
10 are serving 10 or more years. In other words, the
11 minimum term would be 10 or more years.
12 I know, in that group, you've got some
13 people who serve natural life, which means life
14 without parole. That's a group that does have a
15 slightly higher infraction rate than the lifers who
16 have the hope of parole. But even so, the natural
17 life sentence prisoners, what is sometimes called
18 true life sentence prisoners, who have no reasonable
19 hope of release, have significantly fewer
20 infractions than short termers. So they, too, have
21 somehow come to accept the reality of an entire life
22 in prison and worked out a reasonably decent

23 adjustment that is not a danger to others in the
24 community or a problem for others in the prison
25 community.

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1 Q Okay. But in your boxes --
2 A Yes.
3 Q -- you have included, have you not,
4 everyone who has received a sentence of over 10
5 years, so they're clumped in with the true lifers
6 and the natural lifers?
7 A Yes. That's a general, that is a
8 general trend. It's an attempt to give the general
9 picture and that's an accurate general picture.
10 Q Okay. Now, it is true, therefore, that
11 some of these people do have acts of violence while
12 incarcerated and do not adjust?
13 A Well, some certainly do, that's right.
14 As I said, over 9 out of 10 fit that pattern based
15 on the statistics that I am familiar with and the
16 studies that I know of. Therefore, some don't.
17 If we could predict who they were, we
18 would. We're not able to predict who they are. I
19 think, though, it is some comfort to know that if
20 you'd study homicide in prison, you'd discover that
21 the people who commit the homicides in prison are
22 not the long termers, they're the shorter term
23 inmates who then become long termers and typically
24 develop more stable adjustments.
25 Now, of course, if you commit a violent

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crime in prison, you're likely to be segregated a long time in prison and then closely monitored. But the population of people who do that are not the lifers and long termers, they're not the ones who commit the violence, that the staff fears or other inmates fear.
Q Okay. Now, a short term prisoner, upon committing a violent act while incarcerated, could be punished by receiving a consecutive sentence, isn't that true?
A Yes, he could.
Q A person who is serving life in prison, could not receive a consecutive sentence, isn't that true?
A Well, it would depend on the jurisdiction. I would imagine you could be given a true life sentence and in jurisdictions with the death penalty you become eligible for the death penalty if the crime were a murder.
Q Okay. But there comes a point in time when someone cannot receive more time than they have, is that not true?
A Well, yes. Logically.
Q And isn't it also just logical that, therefore, you cannot be punished for that and are

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less likely to follow the rules?
Q Well, as I indicated, the vast majority of people who serve these long terms are not a problem. And secondly, if you have a long termer or

any other inmate who is a problem, the prison system doesn't typically prosecute them as a first resort. What they typically do is manage them with a more restrictive environment.
So for example, if you had any given inmates who is a problem inmate, you have segregated quarters you can put them in. You can put them in other kinds of grades that further limit their movements. So there are custodial options.
You must recognize that there are many states that don't have the death penalties and they have prison and they manage those prisons and they manage them, in many cases, quite well without the threats of a death penalty. What that implies is that people don't only comport their conduct to rules because of the death penalty; they have other motivations. Most of those termers are carving out as decent an existence as they can and it is the fear of losing what little they have, what little they have in the prison community that keeps them in line, rather than the fear of a distant sanction

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like the death penalty.
Q All right. Are you saying that if someone violently assaults or kills another inmate or guard in jail and they are serving a life sentence, they are not normally prosecuted?
Q No, no. I'm not saying that.
Q Okay.
A What I am saying is if you have an inmate who is a problem, you know, who gets into a lot of fights or breaks a lot of rules or is a

troublemaker, makes a lots of threats, makes the
place unpleasant, you can isolate them. And we do
have facilities in all major prisons for the further
isolation of inmates.
Q And are you suggesting, therefore, that
it is not an incentive to someone to not commit a
violent crime because they may go to jail for more
time?
A I think the threat of that will deter
some people. But the vast majority who are in there
doing time are, work out their own way of prison
living and it is the relative benefits of that life
that keep them in line rather than the fear of
further sanctions.
Q Isn't it true, Doctor, that there's a

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certain hierarchy in prison among the prisoners, a
certain pecking order?
A Yes. There is.
Q And aren't lifers usually at the top of
that pecking order?
A Not necessarily. You can't predict the
pecking order strictly by offenses. For example,
you would assume that murderers would have the
highest statue. Well, some murderers do. Some
don't. It depends on how the person carries himself
in the prison.
Armed robbers are often thought of as more
daring than a typical murderer because of the more
sort of wildless character to the crime. Let me
give you an example.
There have been studies of inmates who

have been victimized by other inmates, and there was
a study done of which inmates became rape victims of
other inmates. And what was discovered was that
murderers were as likely as any other group of
inmates to be subjected to sexual violence. So the
fact of their violent crime and their presumably
long sentence didn't put them at the top of the
pecking order.
Prison is a very small community and you

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get your social status based in large measure on how
you carry yourself in that community and how you
handle the pressures of prison living, which can be
quite substantial.
Q Well, you would agree, would you not,
that it is a violent society?
A There is violence in the prison but
prisons are fairly disciplined and structured places
and you can avoid that violence if you want to. For
example, you can carve out a life where you spend a
great deal of time at work in prison. You can spend
a great deal of time in programs. You can avoid
places like the yard and the mess hall or spend
relatively little time there.
Prisons are violent, but just as in the
free world, much of the violence occurs between
people who share violent values and who get
themselves involved in illicit or illegal
activities. Most of the lifers avoid those areas
and those problems because they meet trouble and
trouble underlines what little they have in that
prison life.

23 Q So toughness does not count in this
24 society?
25 A Well, the toughness is not the same

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1 thing as what you were just saying. That you seem
2 tough or you carry yourself well is not the same
3 thing as getting into violent infractions. One of
4 the ways you keep people away from you in prisons to
5 be judicious about where you go. Another way is to
6 look cool and mean and tough wherever you do go so
7 people don't think you're an easy pushover.
8 But it you get yourself involved in a lot
9 of activities in the prison yard, there is more
10 likelihood of trouble because those are the kind of
11 places in which trouble, including violence, take
12 place. So if you're going to move in those circles,
13 you're got to run the risk of trouble. And lifers,
14 tremendously so, the vast majority try very hard to
15 avoid that trouble.
16 Lifers tend to see these people in the
17 yard playing those violent games as impetuous
18 tourists who make their prison less livable and they
19 don't want much to do with them.
20 Q Now, as I understood your testimony on
21 direct and during some of my questions on cross
22 examination, you do agree that you cannot predict
23 which of these people are going to become well
24 adjusted model prisoners and which are not?
25 A Well, let me say this. I know the vast

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1 majority there simply because that's what the
2 findings are. I cannot predict who that minority
3 will be, that is correct.
4 Q And you cannot predict that this
5 defendant will be in that majority, is that correct?
6 A I certainly cannot give you 100%
7 assurance, that's correct.
8 Q Now, what you're talking about is, when
9 you talk about people follow the rules because they
10 know they'll be punished and this is their life and
11 they have to make the best of it, you're talking
12 about goal-oriented behavior, are you not?
13 A Yes.
14 Q You're talking about people who consider
15 their actions, who consider their actions before
16 they act because it may result in some punishment?
17 A Yes.
18 Q So a sudden flare-up of violence or
19 temper, a stream of passion as it were, would not
20 fall at all into this theory which you have just
21 espoused to the jury, is that correct?
22 A No, because, see, you have to look at
23 people in context. It's very obvious that people
24 who become lifers are less impulse-ridden. Lifers
25 in the outside world, they're not very much in

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1 control of themselves. Prison is a much more
2 controlled setting. The punishment and rewards are
3 much more obvious. The life is more manageable.
4 And I think what you discover is that they carve out

an existence that is Spartan but fairly clear-cut and they live from day to day. They kind of shelter themselves from those larger pressures and constraints and temptations that in the outside world they get themselves caught up in, which lead to trouble.
Q Okay.
A If you expected impulsive, violent offenders to be as impulsive and violent in prison as they are outside you wouldn't have prisons you could run. You'd have daily riots. You'd have bodies piled up in the yard. But you don't.
Q But you do agree that not life as you've define it, which is people serving a sentence of greater than 10 years, but true lifers are people who have committed a violent act on the outside?
A All of the people who get l0 or more years or the vast majority of them have committed violent crimes of one sort or another. The emphasis in this literature is on lifers, but long termers are included and they are startlng at a minimum of

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-- at this point, I think it would be misleading to dwell on the 10. I think that's just the bottom end. The mean time served would probably be closer to 20 or 22 years.
But I mean, true lifers who certainly have committed highly violent crimes and have no reasonable expectation of parole still commit infractions at significantly lower rates than short termers.
Q Now, did you sift out your fractions

here? I mean, when you list the number of infractions, do you include things as coming to dinner late as well as carrying a shiv or assaultive behavior?
A That's simply a summary chart. That's simply a summary chart. That's correct. Now, in the literature you will find that people have also argued that the types of offenses tend to be very similar. But the times of offenses tend to be the same.
Now, it's a striking finding, for example, that the kind of violence we fear is not common among lifers, so you wouldn't find lots of violence inside the prison committed by those offenders. So what offenses they do commit don't tend to be

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violent.
Secondly, they don't tend to be escape-related. Only one-tenth of 1% of all the infractions of lifers are related to seeking escape from prison. I think that has to do with the fact that they're doing time in maximum security and opportunities for escape are very few.
Q But it has occurred?
A There have been certainly some escapes from prison by lifers. There have also been escapes from prison from death row. So there's the possibility of escape in any case. But the number of escapes from maximum security prisons in this country is very, very small.
The number of escapes that have been followed by violent crimes is almost infinitesimal.

17 It's a very tiny group.
18 Q Okay. But can you give us any numbers
19 -- and this is a chart. It shows us per person.
20 But how many people actually serving a life sentence
21 for this violent crime -- what prison --
22 A That is the summary chart summarizing a
23 whole body of research, not specific to any one
24 person.
25 Q All maximum security?

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1 A Yes,
2 Q Only maximum security?
3 A Yes.
4 Q Did all the prisons who were used carry
5 people who are serving sentences for first degree
6 murder?
7 A Certainly.
8 Q They did?
9 A Yes.
10 Q Now, if you were either, say, as a part
11 of a study, you were going to spend time in prison,
12 you weren't going to be treated any differently from
13 anyone else, you were just going to share a cell
14 with somebody in prison -- who would you prefer --
15 someone serving two years for tax evasion or a
16 convicted murderer who is serving a life sentence?
17 Who would you prefer to share a cell with?
18 A Well, you know, you have to answer that
19 question emotionally and in terms of one's
20 knowledge. I mean, I'm not afraid of tax evaders
21 generally. I don't see any reason to be concerned
22 about that. Like anyone else, you would be uneasy

23 about walking into prison and sharing a cell with a
24 convicted murderer under those conditions.
25 If you want to take your hypothetical a

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1 bit further, let me see the man's record, if he fits
2 into this fairly typical pattern, then I could
3 assume we could co-exist. But I would be uneasy
4 walking into any prisoner, like anybody, including
5 murderers.
6 When you're sentenced to prison, I don't
7 think you should have the impression that we're all
8 sent to prison, cool, calm and collected. It's a
9 very traumatic, depressing thing. A person may well
10 deserve this. I won't argue that point. Whether
11 they deserve it or not, let's put it aside for a
12 moment.
13 These are people with doubts and fears of
14 their own, going to prison with a lot of people,
15 many of whom have adjusted to prison life badly.
16 They're going to have deprivation. They're going to
17 have to be told what to do by fellow adults day in
18 and out. They're going to have to, if they're
19 lucky, work out a fairly monotonous existence along
20 the lines I described. That's a grim prospect for
21 anyone.
22 Q Well, if, Doctor, you chose the
23 convicted murderer and he started blustering, would
24 that cause you concern?
25 A Absolutely, like anybody else, and I

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1 would try to respond to it.
2 Q But the hypothetical like that is hard for
3 me to respond to because, in my research, of course,
4 I come in contact with people who fit this
5 characterization. I've also interviewed people
6 condemned to die moments before their execution.
7 And certainly they have reasons to be desperate at
8 that point, and I'm well aware of that.
9 It's hard to know in any specific case
10 what one would do. But I think that we don't
11 normally sample other prisoners and say, we're
12 sending you to the penitentiary; do you mind if we
13 room you with a murderer doing life? I think we
14 simply argue that any felon who goes to the
15 penitentiary takes what he gets and we don't usually
16 weep for them. So I don't even think that's a
17 reasonable hypothetical.
18 When people go to the penitentiary they go
19 there because they committed serious crimes. And
20 together, they have to work out a kind of existence.
21 The long termers will not be a special threat. As a
22 group, they will not be a special danger to
23 themselves or others.
24 So if anything, we could at least say with
25 some confidence that we would expect the lifers to

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1 make the prison more stable, not less, as a fair
2 generalization.
3 Q So who would you pick?
4 A Well, who would you pick?

5 Q I don't have any further questions, Your
6 Honor.
7 THE COURT: Re-direct.
8 RE-DIRECT EXAMINATION
9 BY MR. SCHLAICH:
10 Q Just a couple. Doctor, when the State's
11 Attorney was asking you about your charts and she
12 brought out the fact that people serving a sentence
13 of 10 years and up are on here, you said that the
14 mean time being served, indicated in that chart, was
15 20 to 22 years. What is mean time?
16 A Oh, the average. In other words, the
17 average offender that would be in these studies is
18 probably serving 20 to 22 years. I think nowadays
19 in Maryland, it's probably 25 for a life sentence.
20 That would be the average. Of course, you have a
21 true life sentence in Maryland: that means for as
22 long as the person lives in prison.
23 Q One other thing. The State's Attorney,
24 during cross examination, brought out that one
25 punishment for a person serving a long sentence,

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1 that is, that commits a violent offense in prison,
2 would be to segregate and restrict them even more,
3 correct?
4 A Yes.
5 Q And in fact, Maryland has just completed
6 and opened an institution designed to do just that,
7 is that right?
8 A Yes, it has.
9 Q What is that institution?
10 A This is the -- well, it's informally

known as the Super Max institution that exists next to the penitentiary.
There is another point that I think is worth stressing in this context and that is that Maryland, as a state, is unique in that condemned prisoners are held in the regular prison population. So if any given prisoner is sentenced to life or death, they still go to the Maryland Pen and they go to a regular cell block. The cell block they go to is called Death Row, but they leave that cell block and mingle in the prison population just like any other maximum security prisoner.
The prison officials have concluded that that's a workable arrangement; that in their view that is a custodial, workable and livable

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arrangement. So they would conclude that they can, in fact, manage both condemned prisoners and long term prisoners within the confines of the penitentiary.

* * * *

MR. SCHLAICH: Your Honor, I have a Law Review article that we would like to introduce to the jury from the Stanford Law Review, Volume 40,

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Number 21 November of 1987, entitled Miscarriages of Justice in Potentially Capital Cases. And I have a copy of that article in its entirety and I have provided the State with a copy and I would ask to have it marked and introduced on my motion to

present this to the jury.
And I believe, Your Honor, that the State has some objection to that.
MS. COFFIN: That is correct, Your Honor. The basis of the objection, one, hearsay; two, this type of evidence is no more than what was attempted previously to put in evidence of other types of cases. It has no relevance to this defendant, this case or this sentencing procedure. For those reasons, it would not be admissible.
THE COURT: Mr. Schlaich, can you tell me under what authority this should come in?
MR. SCHLAICH: Your Honor, the authority for this is that, first of all, it's a recognized work from a legal, scholarly journal which this Court does have authority to allow into evidence and to allow to be considered.
THE COURT: Under what authority? Can I just put in an article without giving the other party an opportunity to cross examine?

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MR. SCHLAICH: It's a statistical study, Your Honor, that shows both the positives and the negatives of the way the research was done. It's all explained within the article. So it has both the good and the bad about it explained in there. Therefore, I would say that on sentencing, it's not something that would be --
THE COURT: It is an article that is without an opposing view anywhere?
MR. SCHLAICH: It's an article that is -- subject of the article is that these professors of

12 law have examined cases since the early 1900's
13 through to more current times and have tried to call
14 out a group of cases where they feel a person
15 received a sentence of death and in fact may have
16 been found guilty in error. The article explains
17 how they arrived at that group of cases, explains
18 the shortcomings of that type of judgment about any
19 particular case, and explains why, when each case
20 they chose to include, they did decide to include
21 it.
22 Of course, there could be any number of
23 thousands of cases, obviously, where death was
24 proposed and the guilty verdict was, in fact,
25 correct. If I remember correctly, Your Honor,

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1 there's only 109 cases that they pull out that they
2 felt met their criteria for inclusion in the study
3 as cases where the original guilty verdict was
4 incorrect.
5 THE COURT: The State's objection is
6 sustained. It is hearsay. It deprives the State of
7 the opportunity to cross examine the authors. It is
8 not a work that is unopposed. It's an
9 interpretation and evaluation by its authors.
10 Therefore the objection is sustained.
11 MR. SCHLAICH: Your Honor, I would just
12 note an exception to that. I think that under
13 Lockett and Ettings and also the Doering ruling in
14 Maryland, that that type of information should be
15 admissible. And could I ask, for the record, what
16 it was marked as?
17 THE COURT: Defendant's 8.

18 MR. SCHLAICH: Defendant's 8.
19 THE COURT: Doering says that an article
20 like this can come in?
21 MR. SCHLAICH: I think the principle of
22 Doering, Your Honor, is that anything the jury might
23 consider to be in any way mitigating to the
24 punishment they're being asked to inflict, they
25 should be allowed to consider.

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1 THE COURT: Okay.
2 MR. SCHLAICH: Your Honor, also at this
3 time I would ask the Court the question we have
4 presented in pre-sentencing motions, the idea that
5 we would be allowed to present to the jury the
6 explanation of the plea bargain that was offered to
7 the defendant. And the question to the Court is,
8 have you, in any way, reconsidered your ruling that
9 we could not do so?
10 THE COURT: Are you asking whether I've
11 been thinking about it?
12 MR. SCHLAICH: Well, Your Honor, the
13 question is --
14 THE COURT: I've been thinking about a lot
15 of things, Mr. Schlaich. But do you mean will I
16 permit you to present to the jury the fact that the
17 State had made a plea offer which was rejected?
18 MR. SCHLAICH: Yes, Your Honor, under the
19 terms of the proffer that was made during the
20 motions on what that plea was; the reason being --
21 THE COURT: Quite frankly, I would like
22 the jury to know that but I'm not going to change my
23 ruling. I don't think it's correct legally for me

to permit it.
MR. SCHLAICH: I understand, Your Honor.

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I would just note that we would have at this time tried to present that to the jury.
THE COURT: Yes.
MR. SCHLAICH: The other thing, Your Honor, is that during motions, we asked the Court's permission on our motion to permit evidence of other first degree murderers who did not receive a sentence of death, to present to the jury the transcript of the case of State v. James E. Malone. And during that motion I proffered to the Court what that transcript would contain. Apologized to the Court at that time because I did not have it with me.
I would ask at this time that the actual transcript be marked as a Defense Exhibit, first on that motion, and introduced as such on the motion.
Then, Your Honor, I would ask, again, the Court's permission to present this item to the jury now during the sentencing proceeding.
THE COURT: State wish to respond?
MS. BROBST: We're opposed to this introduction for the reasons previously stated. Your Honor. The introduction of something like that in a vacuum is misleading to the jury who doesn't know the reasons for the decision to have the case

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proceed in that manner.

Additionally, as the Court previously pointed out, the State would then argue that it be allowed to introduce a case which we would argue was similar, in which the death penalty was received by a defendant. A number of considerations go into a case like that, not one of which is the feelings of the family of the victim. And certainly you just can't retry every case that the State has ever sought the death penalty in, in every death penalty case.
THE COURT: Is there anything else you want to put on the record?
MR. SCHLAICH: Nothing I want to add. All our grounds were stated on argument on the motion.
THE COURT: Again, I do not believe that this is relevant to the sentencing of this defendant. The courts have instructed the trial courts to make sure that evidence and information that is relevant to the sentencing of this defendant is certainly admissible. As the State points out, how again can this be treated by the State? Does the State have an opportunity to put in an opposing case for their consideration, so that there can be a weighing of whether this case here of Mr. Wiggins is

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more like the one that you offer or more like the one the State offers? Your request is denied again.
MR. SCHLAICH: Your Honor, for the record, could you tell me the number of that?
THE COURT: That is, for identification, Defendant's Nine.
MR. SCHLAICH: Thank you, Your Honor.

8 Lastly, Your Honor, it's my belief that
9 Mr. Wiggins will choose to exercise his right to
10 allocute to the jury and will choose not to testify
11 from the witness stand. The reason I'm bringing
12 this up at this point is because it's also my
13 belief, Your Honor, that Mr. Wiggins, in his
14 statement to the jury, which he has been thinking
15 about, would disclose to the jury that he was
16 offered a plea agreement and would disclose to the
17 jury what the terms of that agreement were as he
18 understood them to be. And I think Your Honor, that
19 given your ruling on our efforts to do that in
20 evidence during the direct part of the defense case,
21 we need some guidance from the Court as to whether
22 the Court will allow Mr. Wiggins to do that during
23 his allocution.
24 THE COURT: Ms. Brobst?
25 MS. BROBST: Your Honor, we'd object. Not

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1 only are we not only unable to refute any of that
2 evidence, which we could if it were introduced in
3 the defense case, because we're not even entitled to
4 cross examine the defendant who allocutes.
5 THE COURT: Anything else, Mr. Schlaich?
6 MR. SCHLAICH: No, Your Honor.
7 THE COURT: The allocution by the
8 defendant is considered evidence in the case for the
9 purposes of the jury determining what the sentence
10 ought to be, although that evidence is not given
11 under, it's not testimony given under oath. It's
12 still considered as evidence in the case by the
13 jury, to help make their determination.

14 To permit the defendant to tell the jury
15 that there was a plea bargain offered which he
16 denied or rejected is the kind of evidence that the
17 State ought to have had an opportunity to rebut.
18 But if I don't let it in in the first place for the
19 reasons that I stated on the motion in limine
20 hearing, I certainly shouldn't let it in in the form
21 that is proposed, that is during the allocution by
22 the defendant.
23 He's instructed not to refer to the plea
24 bargain.
25 MR. SCHLAICH: I will so instruct my

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1 client, Your Honor.
2 THE COURT: is there anything else?
3 MS. BROHST: No, Your Honor.
4 MR. SCHLAICH: Court's indulgence a
5 moment.
6 Your Honor, the last thing to bring up is,
7 in fact, when Mr. Wiggins would be allowed to
8 allocute. He, I am led to believe, has been writing
9 his statement out so that he covers the things he
10 desires to and will also have to, of course, now
11 edit what I'm told that statement is to reflect, the
12 Court's instructions on the plea.
13 Therefore, Your Honor, we would ask that
14 he be allowed to do that tomorrow morning as opposed
15 to this afternoon to give us some time to meet with
16 him.
17 THE COURT: Not likely that he's going to
18 allocute this afternoon, anyway. Is it? Hadn't we
19 determined yesterday that -- are you going to be

20 finished now?
21 MR. SCHLAICH: We'll be finished now, yes.
22 THE COURT: Oh, I thought you said you had
23 another witness coming.
24 MR. SCHLAICH: Your Honor, what we have is
25 that, because of the Court's ruling denying

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1 bifurcation of the sentencing phase of this hearing,
2 and based on our argument that to present evidence
3 of Mr. Wiggins' psychological profile during a
4 non-bifurcated proceeding would prejudice the jury's
5 decision as to whether Mr. Wiggins was the principal
6 in the first degree in this offense, we feel that we
7 are prejudiced in such a way that we are precluded
8 from presenting our last witness, who would be,
9 would have been Dr. William /STERB letter. And
10 therefore, we would not be offering him to the jury
11 live.
12 We would like to put on a proffer as to
13 what his evidence would have been. I don't think I
14 brought it with me because I was planning more on
15 this afternoon doing that.

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3 MR. SCHLAICH: Your Honor there are two
4 other things I need to do out of the jury's
5 presence. First of all, I forgot one other piece of
6 evidence that was ruled on on motions. That was the
7 proportionality study, which on our motion on
8 proportionality, was labeled Defense Exhibit l-A, B
9 and C. Your Honor, we would wish to introduce that

10 evidence to the jury at this point in time, although
11 we understand that your ruling is that we cannot do
12 that. Is that correct?
13 THE COURT: Does the State wish to be
14 heard?
15 MS. BROBST: No, Your Honor. We'll submit
16 on the previous argument.
17 THE COURT: Your request is denied.
18 MR. SCHLAICH: Yes, sir. The other thing
19 is, Your Honor, I said to the Court that we had
20 decided, based on your ruling denying bifurcation,
21 that the potential prejudice to our client by
22 putting, potential prejudice, to the issue of
23 whether our client is the principal in the first
24 degree would be severe if we put on the psychologist
25 we have, Dr. Stejskal. I would, at this time,

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1 proffer that Dr. Stejskal would have testified to.
2 Your Honor, Dr. Stejskal saw the defendant
3 at the Detention Center on two occasions. He did
4 numerous psychological tests. The results of those
5 teats would be as follows:
6 That Mr. Wiggins is very childlike, that
7 he shows a lack of intellectual development, that he
8 feels impotent, meaning that he feels ineffective
9 and overmatched by life.
10 His reading scale is on a 5th grade
11 level. His math scale is on a 7th grade level. He
12 has a full scale IQ of 79, which puts him in the
13 bottom 8% of his age.
14 He did very low on tests that indicate
15 emotional deprivation and lack of use of reading

skills, meaning that those are two things he's very weak in by that low score.
The doctor would testify that an IQ of 79 impairs a person's function in every aspect of daily life that requires problem solving, that it makes those people poor social judges of other people, that it makes people poor judges of decisionmaking in general, that it makes them anxious and confused in demanding situations but, however, at an IQ level of 79, you are bright enough to know that you do

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more poorly at problem solving than others do and therefore that makes you emotionally vulnerable to what you expect to be an oncoming attack.
He suffers from no brain damage. The doctor will testify that he scored low on the antisocial scale, that he's not impulse ridden, that he is not narcissistic; however, the defendant, the defendant's tests results indicate that he is the type of person who will occasionally take what he thinks he is entitled to.
Furthermore, Your Honor, the results would indicate that he has difficulty coping, but those difficulties are not due to any presence of a psychotic disorder. He's not self-centered or narcissistic. He's aware of his limits. He's interested in other people. He has some capacity for empathy with other people. He wants to function in the world.
The doctor found him to be void of what he classifies as the malignant fluff, which means he sees no aggressive pattern in his behavior and no

acted-out hostility. However, he would note that Mr. Wiggins is full of bluster and likes to mouth off and did, in fact, engage in a session of that with the doctor.

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He would furthermore state that he feels that he would adapt to prison. However, he will be a very verbal and loud-mouthed prisoner for some time but not physically aggressive.
He would state that it is his opinion that the defendant currently has a psychiatric/psychological diagnosis of personality disorder NOS, which means not of specific type, and that it has features of borderline paranoid personality. And that is our proffer of his testimony, Your Honor.
THE COURT: And you understand that I'm not barring you from offering that testimony but it's in your judgment from a trial strategy that it would be prejudicial to the defendant because of the denial to bifurcate the proceeding; is that correctly stated?
MR. SCHLAICH: Exactly, Your Honor. I understand you're not barring it but that's a correct restatement of our position on it, Your Honor.
THE COURT: Okay.
MR. SCHLAICH: That's all we have, Your Honor. The pictures that the State and defense talked about during Sergeant O'Neill's testimony, we

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have them and we would put those into evidence when the jury comes in.
MS. BROBST: No objection.
MR. SCHLAICH: I think the only thing left is Mr. Wiggins' election to testify or not.
THE COURT: Are you both sure you have into evidence everything you want in?
MS. BROBST: State's satisfied, Your Honor.
MS. NETHERCOTT: Hesitate to answer that. But yes, I believe that's it.
THE COURT: Okay.
MR. SCHLAICH: That is considering the Court's rulings on the various items we've attempted to enter.
THE COURT: Okay.
MS. NETHERCOTT: Your Honor, if the Court will allow at this time, I will go over with Mr. Wiggins his right to testify.
Kevin will you stand up, please? Kevin, we've been talking about this.
As you know, you have a right in this proceeding to take the witness stand and testify. That is your right and that is your decision. In the event that you elect to take the witness stand

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and testify, you will be subject to cross examination by the State's Attorney. You also, in this proceeding, because it's a death penalty proceeding, you have what is called a right of

allocution. That means that you will be given an opportunity to address the jury without taking the witness stand. That's not affected by the decision you make regarding testimony.
If you elect to allocute, under Maryland law, the prosecutor is free to comment on the fact that you did not take the witness stand. Anything else the Court would like me to cover with regard to the waiver?
THE COURT: is that the extent of the waiver that you intend to give to him?
MR. SCHLAICH: Excuse me.
MS. NETHERCOTT: Well, also, Kevin, if you do take the witness stand, you must answer any question that's asked of you. If it is a question the judge rules is a permissible question, you would have to answer.
THE DEFENDANT: Okay.
MS. NETHERCOTT: Now, do you understand these rights?
THE DEFENDANT: Yeah.

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THE COURT: Is it my understanding that there are no prior conviction which the State may use against him? Is that correct?
MS. BROBST: That's correct, Your Honor.
THE COURT: Do you understand that, that if you decided to testify, they couldn't bring up any prior criminal convictions?
THE DEFENDANT: Right. I understand that. But let me just say something. I mean, everybody doing every damn -- think I have one

11 right to say one thing. I don't have anything to
12 hide, okay. And I don't care what anybody thinks,
13 all right. I know that I didn't kill, but -- can I
14 explain to him why? Okay.
15 THE COURT: Well, the record should
16 reflect that after speaking with counsel, he decided
17 not to say anything further at this time, so it
18 doesn't appear that the Court is preventing him from
19 speaking.
20 MS. NETHERCOTT: Yes, Your Honor, the
21 record should so reflect.
22 THE COURT: Go ahead with your advisement
23 or, if you're finished that --
24 MS. NETHERCOTT: I think I'm finished it
25 unless the Court has anything else.

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1 Have you had a chance to discuss this with
2 both Carl and myself?
3 THE DEFENDANT: Yeah, I have had a chance.
4 MS. NETHERCOTT: And have you made a
5 decision?
6 THE DEFENDANT: Yeah, I made a decision
7 based on --
8 MS. NETHERCOTT: And what is the
9 decision?
10 THE DEFENDANT: I don't, I don't think I
11 can say anything that have any --
12 MS. NETHERCOTT: Well, just are you going
13 to testify or not testify?
14 THE DEFENDANT: No.

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16 MS. NETHERCOTT: Kevin, one more thing.
17 Stand up for a minute, please.
18 One more thing I want to explain to you
19 that Judge Hinkel has just pointed out to me. In
20 the event you do not testify, you are entitled, you
21 have the right to have the jury instructed that
22 under the law, they must not infer from your failure
23 to testify in this case that you are a first degree
24 principal or, in this case, to make any decision
25 about what the appropriate penalty would be based on

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1 that. They would be instructed if your lawyers, if
2 you, after discussing it with me, wanted this
3 instruction given to the jury, they would be told
4 that they were not to infer anything from that and
5 they were to decide this case solely on the evidence
6 that's been presented. Do you understand that?
7 THE DEFENDANT: Yeah.
8 MS. NETHERCOTT: Okay.
9 THE COURT: And your decision is? Which?
10 THE DEFENDANT: No.

* * * *

17 MR. SCHLAICH: Your Honor, continuing the
18 defense case, I would at this time offer into
19 evidence three pictures that have been marked
20 Defendant's Exhibits 10, 11 and 12. Your Honor,
21 during the testimony of Sergeant O'Neill, the
22 question was raised about some pictures of the
23 inside of Ms. Lacs' car which we did not have

24 available to us at the time, either the State or the
25 defense. These three pictures, 10, 11 and 12, are

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1 pictures of the inside of the car, and the State has
2 agreed that they are pictures of the inside of the
3 car taken and processed by the Crime Lab. So we
4 would be offering these as stipulation,
5 essentially, at this point.
6 MS. BROBST: So stipulated, Your Honor.
7 THE COURT: Okay. Would be Defendant's
8 10, 11 and 12.
9 (Defendant's Exhibit Nos. 10, 11, and 12,
10 photographs, were entered in evidence.)
11 MR. SCHLAICH: And I'd just like to show
12 those to the jury before we move on.
13 (Pause.)
14 MR. SCHLAICH: Your Honor, the defense
15 rests.

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